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CONSTITUENT ASSEMBLY OF INDIA

CONSTITUTIONAL PRECEDENTS

(Third Series)

1947

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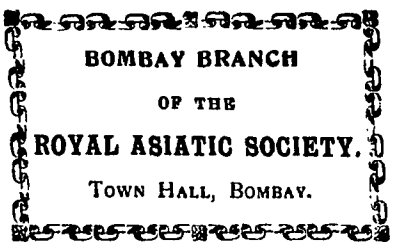
PRINTED BY THE MANAGER GOVERNMENT OF INDIA PRESS NEW DELHI, INDIA: 1947

Price Rs. 2 or 3s.



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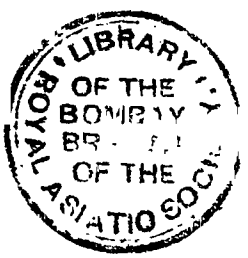

HEAD OF THE STATE

By " Head of the State " is meant the Supreme Executive Authority of the State. It is now well recognized that every State must have such a Chief Executive. In many cases the King was originally the repository of all powers in the State. He was the law giver, the executor of the law and the judge. But gradually, one by one, these powers were delegated by him to others and in some cases, he even disappeared. Where he disappeared, the problem arose of having a suitable substitute. Even Cromwell found it necessary to evolve the office of a Lord Protector. The need was particularly felt in the international sphere. There were certain duties, *e. g.*, receiving foreign potentates and ministers, which it was impossible for a body of men, like a Cabinet or a Parliament, to perform simultaneously. Thus the various types of non-hereditary Executives we come across in the present day represent the various attempts made by Constitution makers to instal uncrowned kings in places which were once occupied by crowned ones.

It may be that in certain States in matters official the Head of the State is no more than a distinguished " Rubber Stamp "; but even a rubber stamp has its use. A familiar test which is, therefore, adopted by text-book writers is to ask whether the Executive is real or nominal. In some cases the real and nominal blend in one person, as in the U. S. A.; there is then really no nominal Executive. But in the vast majority of cases it is possible to distinguish between the formal Head of the State and the real Executive. We are concerned here more with the nominal or formal Executive. The real Executives of modern Democracies have been dealt with in the pamphlet on ' Democratic Executives ' in Constitutional Precedents (First Series).

Professor J. H. Kraus in " The Crisis of German Democracy ", 1932 (p. 171) says that there are five possible types of State Heads which, named in the sequence of their importance, can be characterized under the following terms :—

(1) The representative head of the State.

(2) The head of the state bureaucracy.

(3) The guardian of the Constitution.

(4) The highest equalising factor in the balance of the state machinery, and

(5) The leader of the people.

This classification reveals the various purposes for which the Head of the State is constituted. The Heads of the different States fall under one or more of these types according to the particular emphasis which the Constitution places upon their functions.

UNITED KINGDOM

In the United Kingdom, there is as every body knows, a constitutional monarchy. Most executive authority is legally vested in the King and is exercised in his name. But every official act of the King is done on the responsibility of a Minister. On this is based the doctrine that the King can do no wrong; for what he does some Minister is held responsible.

The legal position of the Crown has been little affected by the passag of time. It remains nearly the same as in 1872 when Bagehot gave the following startling enumeration of the legal powers of the Crown :—

"The Queen could disband the army (by law she cannot engage more than a certain number of men); she could dismiss all the Officers, from the General Commanding-in-Chief downwards; she could dismiss all the sailors too; she could sell off all our ships of war and all our naval stores; she could make a peace by the sacrifice of Cornwall and begin a war for the conquest of Brittany. She could make every citizen in the United Kingdom, male or female, a peer; she could make every parish in the United Kingdom a "University"; she could dismiss most of the civil servants; she could pardon all offenders. In a word, the Queen could by prerogative upset all the action of civil government within the Government, could disgrace the nation by a bad war or peace and could, by disbanding our forces, whether land or sea, leave us defenceless against foreign nations".

This passage illustrates the vast reserve of the powers vested in the King of England. The fact that no monarch in his senses would on his own even attempt to exercise these powers is another matter.

The powers of the Crown of the present day are derived from custom and from statute. The functions of the King may be dealt with briefly under three heads: (a) non-political; (b) political; and (c) formal.

(a) The Crown has been described as the pivot of the "dignified part of the Constitution" and the following claims have been made for the institution of Monarchy: A Monarchy calls forth feelings which no Republic can evoke. It appeals to the sentiments of the people more than any other form of Government. It provides an "intelligible headpiece" and is valuable in excluding competition for the leadership of the society. Above all, the Crown acts as the guardian of the "invisible" Constitution. It "acts as a disguise", for, "it enables the real rulers to change without heedless people knowing it".

(b) It is not easy to describe the political functions of the Crown. A good deal depends upon the character of the Monarch. The regime of Queen Victoria provides ample evidence to show how an exceptionally capable Sovereign, strong of will and greatly devoted to duty, backed up by the experience gained during a long reign, left a profound impression upon the government of the day. In the words of Gladstone, "The acts, the wishes, the example of the Sovereign in this country are a real power. An immense reverence and tender affection await upon the person of the one permanent and ever faithful guardian of the fundamental conditions of the Constitution."

(c) Of the formal prerogatives of the Crown the following are the more important, namely. (*i*) the right of dissolution, *i. e.* the right to appeal from the Parliament to the people; (*ii*) the right to refuse a dissolution, *i.e.*, the right to appeal from the Ministry to the Parliament; and (*iii*) the right to select his Chief Adviser, that is, the Prime Minister. These rights are, no doubt, circumscribed by many considerations, but no one can deny that these rights exist.

Mention may also be made here of three other rights enumerated by Bagehot: the right to be consulted, the right to encourage, and the right to warn. "A King of great sense and sagacity would want", he wrote, "no other". The letters of Queen Victoria afford various instances where this masterful sovereign exercised all these rights.

CANADA, AUSTRALIA AND SOUTH AFRICA

In each of these Dominions the *de jure* Head of the State is the King England, but in every Dominion he is represented by a Governor-General.

It may be useful to reproduce here the relevant provisions in the three Constitutions :

CANADA

"*Sec.* 9.—The Executive Government and Authority of and over Canada is hereby declared to continue and be vested in the Queen.

Sec. 10.—The provisions of this Act referring to the Governor-General extend and apply to the Governor-General for the time being of Canada, or other Chief Executive Officer or Administrator for the time being carrying on the Government of Canada on behalf and in the Name of the Queen, by whatever Title he is designated.

Sec. 15.—The Command-in-Chief of the land and Naval Militia, and of all Naval and Military Forces, of and in Canada, is hereby declared to continue and be vested in the Queen."

(British North America Act, 1867.)

AUSTRALIA

"*Sec.* 61.—The executive power of the Commonwealth is vested in the Queen and is exercisable by the Governor-General as the Queen's representative, and extends to the execution and maintenance of this Constitution, and of the laws of the Commonwealth.

Sec. 68.—The Command-in-Chief of the naval and military forces of the Commonwealth is vested in the Governor-General as the Queen's representative."

(The Commonwealth of Australia Constitution Act, 1909.)

SOUTH AFRICA

"*Sec.* 9.—The Governor-General shall be appointed by the King and shall have and may exercise in the Union during the King's pleasure, but subject to this Act, such powers and functions of the King as His Majesty be pleased to assign to him.

Sec. 10.—There shall be payable to the King out of the Consolidated Revenue Fund of the Union for the salary of the Governor-General an annual sum of ten thousand pounds. The salary of the Governor-General shall not be altered during his continuance in office.

Sec. 17.—The Command-in-Chief of the naval and military forces within the Union is vested in the King or in the Governor-General as his representative."

(South Africa Act, 1909.)

Under the old colonial system the Governor-General represented the Crown, that is, the Home Government. He was all powerful. Gradually, just as the power of the King at home was first checked and finally taken over by a Cabinet responsible to the Parliament, so also, the power of the Governor-General in the colonies passed from his hands into the hands of the people of the colonies. With the history of the transition from the

colonial system to the responsible Government of the present day we are not concerned. What has to be noted is that the Governor-General came to occupy in the dominions a position similar to that of the King in England. He represented a mere formal Head of the State. After the Imperial Conference of 1926, the Governor-General in a Dominion ceased to represent the Government of Britain (considered as Cabinet) and became merely a representative of the King, with the result that the Government of the United Kingdom had to appoint another official, called the High Commissioner, in a Dominion to act as a liaison officer between the Dominion and the Home Government

In Canada and Australia, the Governor-General whenever there is a vacancy in the office, is appointed by the King primarily, if not solely, on the advice of the Dominion Cabinet. But, in South Africa, the Governor-General is appointed on a commission counter-signed by the Prime Minister of the Union and not by a British Secretary of State. The Union Government is thus solely responsible for this appointment. The term of office of the Governor-General in all the three Dominions is 5 years.

The Cabinet is the *de facto* Executive in the Dominion. In all political matters the Governor-General acts only on the advice of the Cabinet. He does not preside over the business meetings of the Cabinet, which are summoned in the name of the Prime Minister. The Governor-General acts merely as the constitutional head of the Government advised by Ministers.

IRELAND

In Ireland there is no Governor-General but a President. When the new Constitution was passed in 1937, all references to the King and in the main to the Governor-General were omitted from it, but the Executive Council was authorized to avail itself, for diplomatic and consular appointments and international agreements, of any organ used for these purposes by other Members of the British Commonwealth, though that term was avoided. Therefore it is rather difficult to define the exact position which Ireland occupies in the British Commonwealth. Mr. De Valera claims that Ireland is a Republic, while His Majesty's Government treats it as part of the British Commonwealth.

The Irish Executive is of the British responsible type, that is to say, it is a parliamentary Executive. The President is therefore a formal Head of the State and, save as otherwise provided in the Constitution, all powers and functions conferred on the President by the Constitution are to be exercised by him only on the advice of the Government of the day.

The President is elected by the people. The electorate is the same as that for the Dail. The election is by secret ballot on the system of proportional representation with the single transferable vote. He holds office for seven years from the date upon which he enters upon his office, unless before the expiration of that period he dies or resigns or is removed from office, or becomes permanently incapacitated, such incapacity being established to the satisfaction of the Supreme Court consisting of not less than five Judges. A person is eligible for re-election to that office but only once. He may not leave the State during his term of office save with the consent of the Government. He may be impeached for stated misbehaviour. A proposal

in neither House of the Legislature to prefer a charge against the President may not be entertained unless upon a notice of motion in writing signed by not less than 30 members of that House. And such proposal may be adopted by a House only upon a resolution of that House supported by not less than two-thirds of the total membership thereof. When a charge is preferred by one House, the other House is to investigate the charge or cause the charge to be investigated. The President has the right to appear and to be represented at the investigation of the charge. If, as a result of the investigation, a resolution is passed, supported by not less than two-thirds of the total membership of the House of the Legislature by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained and that the misbehaviour, the subject of the charge, was such as to render him unfit to continue in office, the resolution operates to remove the President from his office.

FRANCE

A brief reference may be made here to the position of the French Presidents both under the old Constitution of 1875, and under the new Constitution which has just been approved by the people of France.

The President under the Constitution of 1875 has been made famous by a classic aphorism of Sir Henry Maine. "There is no living functionary" he wrote, "who occupies a more pitiable position than a French President. The old Kings of France reigned and governed. The constitutional King of England, according to M. Thiers, reigns, but does not govern. The President of the United States governs, but he does not reign. It has been reserved for the President of the French Republic neither to reign nor yet to govern." This statement was substantially true ; the real Executive in France was the Cabinet and the President was merely a figurehead.

He was elected for seven years, not by the people but by the two Houses of the French Parliament, sitting together as a National Assembly. He was re-eligible for election any number of times. Under the previous Constitution the President had been responsible to the Legislature, but the inconvenience and danger of this principle soon became apparent and therefore when the Constitution came to be revised in 1875 he was made "irresponsible" except in the case of high treason. If accused of high treason, the President could be impeached by the Chamber of Deputies, and tried by the Senate. The Senate had the power to order his dismissal and to impose suitable penalties. Save as above, the President was, for the duration of his term, irremovable. In the Executive sphere he could act only through his Minister who under the Constitution were to countersign every decree of his. His position was, in fact, merely that of "a constitutional King for seven years".

Under France's latest Constitution the President of the Republic will be elected for seven years by the two Houses of the Legislature. Among his powers are the following :

He designates the Prime Minister and confirms the latter's choice of Ministers. He presides over the Council of Ministers, the Council of Magistrates, now less dependent on political parties, and the Supreme Council of National Defence. He confirms the dissolution of the assembly if the Government has been out voted twice within 18 months after the first 18 months of its existence. All his edicts must be countersigned by the Premier and another Minister.

THE WEIMAR CONSTITUTION OF GERMANY

Under the Weimar Constitution of 1919 the Reich President was elected by the whole German people by secret, equal and direct ballot, men and women being entitled to vote. The fathers of this Constitution deliberately discarded the French system of the Parliament electing the President, as such a system was, in the words of Hugo Pruess, "false parliamentarism". According to him, real parliamentarism postulates two organs of State which are on an equal footing, *e. g.* Parliament and President, and this can only be achieved if the President is elected not by the Parliament but directly by the people.

Any German over 35 years of age may be elected to the Presidency. I was not necessary, as in the U.S.A., for the President to be born on German soil; it was sufficient if he was a German citizen. Nor was there any restrictive provision, as in the old French Constitution, prohibiting a member of one of the reigning families of Germany from becoming the President.

To be elected a President, a candidate had to receive an absolute majority of the votes cast. If at the first election no candidate received a mojority of votes, a second ballot was held. This second ballot was not necessarily confined to the two candidates who obtained the highest number of votes in the first ballot; it was even permissible for a candidate to contest the election for the first time at the second ballot. For instance, in 1932, President von Hindenberg was in fact put up as a candidate only at the second ballot.

The term of office of the President was seven years, which was much longer than the term of the Reichstag which, at the most, could extend only to four years. He could be re-elected any number of times, but his term of office could be terminated prematurely by deposition. Such deposition was to be proposed by the Reichstag by a resolution which required a two-thirds majority and was decided by the people. In case the verdict of the popular vote went in favour of the President, he could remain in office for a further term of seven years and the Reichstag was automatically dissolved. The President or any of his Ministers could be impeached for violation of the Constitution or a Reich Law by a two-thirds vote of the Reichstag, the trial being held in special Court, the Staatsgerichhof. In case of any temporary incapacity of the President, the Chancellor was to act as his constitutional substitute.

The President was the Commander-in-Chief of the army and navy, and represented the Reich in foreign affairs, but a declaration of war could be made only by the Legislature while alliances and treaties required its assent. The President had the Power to appoint and dismiss the Chancellor and Ministers as well as all the officers Civil and Military. He had the right to pardon in any case decided by the German Supreme Court in the first instance or by any other Court in Germany. In the sphere of legislation he promulgated the Reich Laws. Under certain circumstances he could order a plebiscite to be held and, within the limits of Article 48 of the Constitution, could even legislate. But all his decrees and orders had to be countersigned by a Minister, who thereby accepted responsibility for them. The position of the President was therefore strictly based on the model of a Parliamentary

SWITZERLAND

The Executive of the Swiss Confederation is a peculiar one. The Constitution provides that the supreme directing and executive power of the Confederation is exercised by a Federal Council composed of seven members. It has been said that the Constitution of the Swiss Republic " confides the executive authority neither to a President nor to a Premier; neither to a Cabinet nor to an autocrat ". The Swiss Executive can be classified neither under parliamentary nor under non-parliamentary executives. In fact, it appears to have succeeded in combining the merits and excluding the demerits of both parliamentary and fixed executive systems. The Federal Council, as the Swiss Executive is called, is a body consisting of seven members who are elected by the two Houses of the Legislature, sitting together as a National Assembly. They are elected at the beginning of each new National Council for the duration of that Assembly, namely, three years. The Federal Council is completely renewed after every general election of the National Council. In the Federal Council power is not concentrated in any one man; it is held equally among the seven members. There is, as it were, a diffusion of executive power among a body of men. But every year the Federal Assembly nominates one of the members of the Federal Council as the President of the Confederation who presides over the Council and another as the Vice President of the Council. The outgoing President cannot be elected President or Vice-President for the following year, nor can the same member act as Vice-President for two consecutive years. Usually the Vice-President succeeds the President and the two offices rotate among the members of the Federal Council. The President gets a salary equal to about £60 a year more than each of his colleagues during his term of office.

" By the actual arrangement, the work of the President of the Confederation has been considerably diminished. He is of course still head of a department, which may no doubt be that of foreign affairs, though he can equally direct one of the others, such, for instance, as war or finance. But his presidential functions have been lessened by relieving him of a number of matters of mere administrative procedure, and of the duty of giving numerous audiences to foreign representatives and other persons. He still opens all correspondence addressed to the Federal Council, distributes the business among the different departments, presides at the sittings of the body, and signs the notes and other official correspondence in its name. He still receives foreign representatives on certain occasions, such as the delivery of letters from the head of their country, and the presentation of their letters of credence and recall. He also continues to take the first place, ranking before his colleagues, upon public occasions. It is thus clear that the President of the Confederation has not a tithe of the power entrusted to the President of the United States. He may, indeed, without any disrespect, be likened to the chairman of a board " (Adams & Cunningham: " The Swiss Confederation ", 1889.)

THE UNITED STATES OF AMERICA

The American President provides a perfect illustration of a non-parliamentary or fixed Executive. According to the Constitution the " executive power shall be vested in the President of the U. S. A.," and " he shall hold Office during the term of four years.... together with the Vice-President chosen for the same term ".

The method of election both of the President and the Vice-President is provided for by the Constitution with great precision. "This process of election," wrote Hamilton, "affords a moral certainty that the office of the President will seldom fall to the lot of any man who is not in an eminent degree endowed with the requisite qualifications."

The Constitution contemplates that the election should be indirect. It provides first for an electoral college, the members of which are chosen in each State to a number equal to the number of representatives from the State to the two Houses of the Congress. The actual method of choosing these electors is left to the discretion of each State Legislature. All the State Legislatures have directed that the Presidential electors shall be chosen at the polls by the qualified voters of the State. The electors meet in each State to nominate and cast votes for the Presidential and Vice-Presidential candidates. The votes are sent to the President of the Senate and are counted in the Houses of the Congress sitting in a joint session.

The Constitution intended to confer a wide discretion on the presidential electors in the choice of a President; but in practice, an elector dare not cast his vote for any other than the official nominee of his party. "As a matter of practice, the presidential electors in each State are nominated by the political parties, one slate of presidential electors by each party organization. This is done at state party conventions, or at primaries. Then at the November election in each presidential year, the qualified voters mark their ballots for the one or the other of these party slates. The ballots are usually arranged so that by marking a single cross the voter can indicate his preference for the whole column of Republican or Democratic presidential electors as the case may be. Thus in New York a single cross indicates the voter's choice for the entire forty-eight presidential electors of the Republican party or the Democratic party. Strictly speaking therefore, the President and Vice-President are *not* elected in November. Only the presidential electors are elected at that time. The official election of President and Vice-President takes place at the hands of these electors who meet in their respective states and vote as will be explained a little later." ("The Constitution of the United States" by W. B. Munro, 1944, p. 74.) The author explains later that the electors meet in their respective States and cast their votes on the first Monday in the following January.

To be qualified for the office, the President must be a natural-born citizen of the U.S.A., not less than 35 years of age and resident in the country for at least fourteen years. His salary (which is $75,000) shall neither be diminished nor increased during his tenure of office. In case of a vacancy in the office of the President caused by death or any other disability during his term, his place is taken by the Vice-President; and in the event of a vacancy occurring in respect of both the President and the Vice-President, the office is to be filled *ad interim* by the various members of the Government according to a settled order fixed by statute. The President, the Vice-President and all civil officers of the U.S.A., are liable to be removed from office on impeachment for, and conviction of, treason, bribery, or other crimes and misdemeanours.

As to the genesis of the office, English writers lay much stress upon the British tradition. "It is tolerably clear," wrote Sir Henry Maine, "that the mental operation through which the framers of the American Constitution passed was this: they took the King of Great Britain, went through his powers and restrained them whenever they appeared to be excessive, or unsuited to

the circumstances of the United States." ("Popular Government." p. 212.)

American writers have however taken pains to refute this, but the historical link with the past cannot be denied.

In the words of Prof. Laski "there is no foreign institution with which in any basic sense, it can be compared, because basically there is no comparable foreign institution. The President of the United States is both more or less than a King; he is, also, both more or less than a Prime Minister. ("American Presidency", 1943, p. 23.)

For the functions, etc., of the American President see Chapter IX of the pamphlet on "Democratic Executives" in Constitutional Precedents (First Series.)

THE UNION OF SOVIET SOCIALIST REPUBLIC

Like Switzerland the U.S.S.R., also occupies a unique position. The Constitution does not provide for the office of a Chief Executive; on the other hand, the person who is spoken of as the President of the U.S.S.R., is the Chairman of the Presidium of the Supreme Soviet of the U.S.S.R., which is a sort of a standing Committee of the Legislature. This rather curious state of affairs may be explained by the fact that in the Russian Constitution the demarcation between the Executive and the Legislature is not so clear-cut as in some of the other constitutions. It will be noticed that the Presidium of the Supreme Soviet exercises many of the executive powers which in British India are exercised by the Governor-General.

The Supreme Soviet of the U.S.S.R., elects at a joint sitting of both Chambers, its Presidium, consisting of a Chairman, sixteen Vice-Chairmen, a Secretary and twenty-four members of the Presidium. The Presidium is responsible to the Supreme Soviet in all its activities.

The Presidium has important functions. It convenes twice a year the sessions of the Supreme Soviet; interprets the existing laws and issues decrees, dissolves the Supreme Soviet, in case of the failure of the two chambers to agree, and arranges for new elections; holds referendums on its own initiative or on that of one of the constituent republics; revokes the decisions and orders of the Councils of People's Commissars of the Union and of the constituent republics if they violate the law; in the intervals between the sessions of the Supreme Soviet removes from office and appoints People's Commissars of the U.S.S.R., subject to subsequent confirmation by the Supreme Soviet; bestows decorations and honorary titles; exercises the right of pardon; appoints and dismisses the high command of the armed forces; in the intervals between the sessions of the Supreme Soviet has the power to declare a state of war and at all times to order mobilization, to ratify and to denounce international treaties, to appoint and recall ambassadors, to receive the credentials and letters of recall of foreign representatives.

FUNDAMENTAL RIGHTS (I)

One of the earliest tasks of the Constituent Assembly that is to frame the Constitution of the future Indian Union will be to set up an Advisory Committee "on the rights of citizens, minorities, and tribal and excluded areas". A Committee with such multifarious functions will doubtless find it necessary to split up into at least four sub-committees corresponding to the four branches of its work, and one of these sub-committees will have to deal with the subject of citizens' rights. This is a subject with a long history going back to Magna Carta and perhaps earlier, into the details of which it is unnecessary to enter here. It is sufficient for our present purpose to explain the nature of the problem and to indicate how it has been sought to be solved in other countries.

The Constitutions of a great many countries contain an imposing array of such rights, sometimes described as " fundamental rights ", Reference is invited in this connection (1) to Amendments I-X, XIII-XV, and XIX to the Constitution of the U. S. A., (2) to Articles 4, 31, 44, 45, 49, 50, 55-58, 60 and 65 of the Swiss Constitution, (3) to Articles 109-160 of the German Constitution of 1919, (4) to Articles 118-128 of the Constitution of the U.S.S. R. and (5) to Articles 40-44 of the Constitution of Ireland (printed in the Second Series of Constitutional Precedents). England has no written Constitution, but the great Charters, Magna Carta, the Petition of Rights and the Bill of Rights form part of the Constitution. Broadly speaking, the rights declared in these Constitutions relate to equality before the law, freedom of speech, freedom of the press, freedom of religion, freedom of assembly, freedom of association, security of person and security of property. Within limits these are all well-recognised rights and it may be useful to draw attention to them by embodying them in the Constitutional Charter. The difficulty is in defining the precise limits in each case and in devising effective protection for the rights so limited. Some of the Constitutions have attempted to define the limits of some of these rights and in doing so have gone far towards destroying them. As an example, we may take Article 153 of the German Constitution of 1919, which runs :—

> "Property is guaranteed by the Constitution. Its extent and the restrictions placed upon it are defined by law.
>
> Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation, save in so far as may be otherwise provided by a law of the Reich."

In other words, rights of private property are said to be inviolable except where the law otherwise provides, which means that the rights are not inviolable. Similarly, Article 115 provides, "The residence of every German is an inviolable sanctuary for him ; exceptions are admissible only in vitrue of laws". The fact of the matter is that while these rights can be enunciated in broad terms, it is not possible to enumerate in advance every possible exceeption; the framers of the Constitution, therefore, leave the exception to be put in from time to time by the ordinary Legislature. The result is that there is no constitutional guarantee against an oppressive Legislature.

The other difficulty, namely, that of devising effective protection for the rights defined, really arises out of the difficulty of definition already pointed out. Where a right can only be indicated in broad terms, there is an obvious risk in allowing it to be enforced in the ordinary courts, because there is no knowing how broadly they might interpret it. There are at least three alternatives possible in this connection :—

(1) to take this risk and allow the rights, however imperfectly defined, to be enfored in the ordinary courts ;

(2) to set out the rights merely as moral precepts for the authorities concerned and to bar the jurisdiction of the ordinary courts either expressly or by implication ;

(3) to allow the more easily definable rights to be enforced in the ordinary courts and keep the rest out of their purview.

The difficulties of the problem are best elucidated by a few concrete cases. Let us take one of the most frequently enumerated of these rights, that of equality before the law ; and let us take a country where the rights are enforceable by the Courts : the United States of America. The Fourteenth Amendment to the Constitution of the U. S. A., which came into operation in 1868, puts it in the form that no State shall "deny to any person within its jurisdiction the equal protection of the laws". Obviously, these words are not to be taken too literally ; otherwise, they would render invalid even a State law granting special protection to women or children, as distinguished from other inhabitants, *e.g.*, a law that exempted children under the age of seven from all criminal liability. And so it has been held by the Supreme Court that the mere fact that a law applies to a particular class of inhabitants and not to other classes is not sufficient to invalidate it. But even within the same main class, does the Fourteenth Amendment require absolute equality ?

In *Radice v. New York*, a case decided in 1924 [264 U. S. 292], the Supreme Court was called upon to decide whether a New York law which prohibited the employment of certain classes of women in restaurants of certain classes of cities between 10 p. m. and 6 a.m. was valid or not. The law, it will be noticed, not only did not apply to male employees, but did not even apply equally to all classes of women employees ; accordingly it was attacked as a breach of the Fourteenth Amendment. Nevertheless, the Court held that there was no breach. The Legislature can select special classes or sub-classes for special treatment, provided that the classification is not arbitrary, oppressive, or capricious and, of course, the Court is to decide whether it is so or not in any given case.

But the Court has not found this task easy. In 1902, in *Connolly v. Union Sewer Pipe Company* [184 U. S. 540], an anti-Trust statute of Illinois of 1893 came under scrutiny. The statute made trusts or combinations for certain specified purposes a criminal offence, but added that its provisions did not apply to agricultural products or livestock in the hands of the producer or raiser. It was argued against this statute that the exemption of agriculturists and stockmen was repugnant to the "equal protection" clause and therefore that the entire statute was invalid. The Supreme Court in accepting both these contentions observed :—

"If combinations of capital, skill, or acts, in respect of the sale or purchase of goods, merchandise, or commodities, whereby such combinations may, for their benefit exclusively, control or establish prices, are hurtful to the public interests and should be suppressed, it is impossible to percieve why like-

combinations in respect of agricultural products and live-stock are not also hurtful. Two or more engaged in selling dry goods, or groceries, or meats, or fuel, or clothing, or medicines, are, under the statute, criminals, and subject to a fine, if they combine their capital, skill, or acts for the purpose of establishing, controlling, increasing, or reducing prices, or of preventing free and unrestrained competition amongst themselves or others in the sale of their goods or merchandise ; but their neighbours, who happen to be agriculturists and live-stock raisers, may make combinations of that character in reference to their grain or live-stock without incurring the prescribed penalty. Under what rule of permissible classification can such legislation be sustained as consistent with the equal protection of the laws ? * * * *

" We conclude this part of the discussion by saying that to declare that some of the class engaged in domestic trade or commerce shall be deemed criminals if they violate the regulations prescribed by the state for the purpose of protecting the public against illegal combinations formed to destroy competition and to control prices, and that others of the same class shall not be bound to regard those regulations, but may combine their capital, skill, or acts to destroy competition and to control prices for their special benefit, is so manifestly a denial of the equal protection of the laws that further or extended argument to establish that position would seem to be unnecessary." [184 U. S. 564.]

Nearly forty years later, in 1940, in *Tigner v. Texas* [310 U. S. 141], an anti-Trust law of Texas of a similar character and containing a similar exemption in favour of agricultural products and live-stock again came before the Supreme Court. This time, the Court upheld the law, observing, " The equalty, at which the ' equal protection ' clause aims is not a disembodied equality. The Fourteenth Amendment enjoins ' the equal protection of the laws ', and laws are not abstract propositions. They do not relate to abstract units A, B and C, but are expressions of policy arising out of specific difficulties, addressed to the attainment of specific ends by the use of specific remedies. *The Constitution does not require things which are different in fact or opinion to be treated in law as though they were the same.* And so we conclude that to write into law the differences between agriculture and other economic pursuits was within the power of the Texas legislature. Connolly's case has been worn away by the erosion of time and we are of opinion that it is no longer controlling ". If the above qualification were incorporated in the Fourteenth Amendment, the " equal protection " clause would be diluted into the mild injunction that the State shall treat as equal in law only those persons within its jurisdiction who are equal in fact. It is, of course, for the Courts to judge whether persons are equal in fact ; but, we may add, the same classes of persons that appeared to the Courts in 1902 to be manifestly equal in fact were found in 1940 to be, in truth, unequal. The protection offered by the clause has thus worn very thin. Indeed, even a Nazi State might have accepted it on its present interpretation, for its Courts could be trusted to rule " A Jew is not equal to an Aryan in fact and there is therefore no ground for treating him as equal in law ". Needless to say, the Supreme Court of the United States has a higher conception of the dignity of man, and the constitutional protection, though " worn away by the erosion of time " in certain other spheres, is still potent in the racial. In *Missouri v. Gaines*, a case decided in 1938 (305 U. S. 337], a negro named Lloyd Gaines, who had been refused admission to

the School of Law of the State University of Missouri, sought to compel the University authorities to admit him upon the strength of the "equal protection" clause in the Constitution. The matter, after going through various courts in the States, ultimately came before the supreme court of the United States; the following extracts from the judgment give the full facts of the case and show the view taken by the majority :—

" Petitioner is a citizen of Missouri. In August, 1935, he was graduated with the degree of Bachelor of Arts at the Lincoln University, an institution maintained by the State of Missouri for the higher education of negroes. That University has no law school. Upon the filling of his application for admission to the law school of the University of Missouri, the registrar advised him to communicate with the president of Lincoln University and the latter directed petitioner's attention to Section 9622 of the Revised Statutes of Missouri (1929), Mo St. Ann. § 9622, p. 7328, providing as follows :—

§9622. *May arrange for attendance at university of any adjacent state—tuition fees.* Pending the full development of the Linclon University, the board of curators shall have the authority to arrange for the attendance of negro residents of the state of Missouri at the university of any adjacent state to take any course or to study any subjects provided for at the state university of Missouri, and which are not taught at the Lincoln University and to pay the reasonable tuition fees for such attendance ; *provided* that whenever the board of curators deem it advisable they shall have the power to open any necessary school or department. (Laws 1921, *p.* 86, §7).

" Petitioner was advised to apply to the State Superintendent of Schools for aid under that statute. It was admitted on the trial that petitioner's ' work and credits at the Lincoln University would qualify him for admission to the School of Law of the University of Missouri if he were found otherwise eligible.' He was refused admission upon the ground that it was ' contrary to the constitution, laws and public policy of the State to admit a negro as a student in the University of Missouri '. It appears that there are school of law in connection with the state universities of four adjacent States, Kansas, Nebraska, Iowa and Illinois, where non-resident negroes are admitted.

* * * * * *

" In answering petitioner's contention that this discrimination constituted a denial of his constitutional right, the state court has fully recognized the obligation of the State to provide negroes with advantages for higher education substantially equal to the advantages afforded to white students. The State has sought to fulfil that obligation by furnishing equal facilities in separate schools, a method the validity of which has been sustained by our decisions.

" But the fact remains that instruction in law for negroes is not now afford ed by the State, either at Lincoln University or elsewhere within the State,"

and that the State excludes negores from the advantages of the law school it has established at the University of Missouri.

* * *

" The state court stresses the advantages that are afforded by the law schools of the adjacent States, Kansas, Nebraska, Iowa, and Illinois, which admit non-resident negroes. The court considered that these were schools of high standing where one desiring to practise law in Missouri can get ' as sound, comprehensive, valuable legal education ' as in the University of Missouri ; that the system of education in the former is the same as that in the latter and is designed to give the students a basis for the practice of law in any State where the Anglo-American system of law obtains ; that the law school of the University of Missouri does not specialize in Missouri law and that the course of study and the case books used in the five schools are substantially identical. Petitioner insists that for one intending to practise in Missouri there are special advantages in attending a law school there, both in relation to the opportunities for the particular study of Missouri law and for the observation of the local courts, and also in view of the prestige of the Missouri law school among the citizens of the State, his prospective clients. Proceeding with its examination of relative advantages, the state court found that the difference in distances to be traveled afforded no substantial ground of complaint and that there was an adequate appropriation to meet the full tuition fees which petitioner would have to pay.

" We think that these matters are beside the point. The basic consideration is not as to what sort of opportunities other States provide, or whether they are as good as those in Missouri, but as to what opportunities Missouri itself furnishes to white students and denies to negroes solely upon the ground of color. The admissibility of laws separating the races in the enjoyment of privileges afforded by the State rests wholly upon the equality of the privileges which the laws give to the separated groups within the State. The question here is not of a duty of the State to supply legal training, or of the quality of the training which it does supply, but of its duty when it provides such training to furnish it to the residents of the State upon the basis of an equality of right. By the operation of the laws of Missouri a privilege has been created for white law students which is denied to negroes by reason of their race. The white resident is afforded legal education within the State : the negro resident having the same qualifications is refused it there and must go outside the State to obtain it. That is a denial of the equality of legal right to the enjoyment of the privilege which the State has set up, and the provision for the payment of tuition fees in another State does not remove the discrimination.

* * *

" Nor can we regard the fact that there is but a limited demand in Missouri for the legal education of negroes as excusing the discrimination in favor of whites. We had occasion to consider a cognate question in the case of *McCabe v. Atchison, Topeka and Santa Fe Railway Co., supra.* There the argument was advanced, in relation to the provision by a carrier of sleeping cars, dining and chair cars, that the limited demand by negroes justified the

State in permitting the furnishing of such accommodations exclusively for white persons. We found that argument to be without merit. It made, we said, the constitutional right 'depend upon the number of persons who may be discriminated against, whereas the essence of the constitutional right is that it is a personal one. Whether or not particular facilities shall be provided may doubtless be conditioned upon there being a reasonable demand therefor; but, if facilities are provided, substantial equality of treatment of persons traveling under like conditions cannot be refused. It is the individual who is entitled to the equal protection of the laws, and if he is denied by a common carrier, acting in the matter under the authority of a state law, a facility or convenience in the course of his journey which, under substantially the same circumstances, is furnished to another traveler, he may properly complain that his constitutional privilege has been invaded.' *Id.*, 235 U. S. pages 161, 162, 35 S. Ct. page 71.

"Here, petitioner's right was a personal one. It was as an individual that he was entitled to the equal protection of the laws, and the State was bound to furnish him within its borders facilities for legal education substantially equal to those which the State there afforded for persons of the white race, whether or not other negroes sought the same opportunity.

"It is urged, however, that the provision for tuition outside the State is a temporary one,—that it is intended to operate merely pending the establishment of a law department for negores at Lincoln University. While in that sense the discrimination may be termed temporary, it may nevertheless continue for an indefinite period by reason of the discretion given to the curators of Lincoln University and the alternative of arranging for tuition in other States, as permitted by the state law as construed by the state court, so long as the curators find it unnecessary and impracticable to provide facilities for the legal instruction of negroes within the State. In that view, we cannot regard the discrimination as excused by what is called its temporary character.

* * * *

"The judgment of the Supreme Court of Missouri is reversed and the cause is remanded for further proceedings not inconsistent with the opinion."

The importance of this judgment is enhanced by the fact that apart from the clause about equal protection of the laws in the Fourteenth Amendment, the U.S.A. Constitution does not expressly provide for equality of educational opportunities for all citizens, irrespective of race. The express provision contained in the Fifteenth Amendment is limited to the franchise: "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." In this respect, the Constitution of the U.S.S.R. is more liberal, because under Article 123, "Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life, is an indefeasible law. Any direct or indirect restriction of the rights of, or, conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law." But the Supreme Court of the U.S.S.R. has no power to disallow laws and acts which contravene the rights declared. The Presidium of the Supereme Soviet—which is a sort of joint Standing Committee of the Chambers of the Supereme Soviet (the Union Parliament)—interprets the laws of the U.S.S.R. and annuls decisions and orders of the

Governments of the Union and the Constituent Republics in case they do not conform to law. [Article 49 of the constitution of the U.S.S.R.].

The following account, taken from the "New York Times", of a very recent American case is of interest in this connection :—

> "The U. S. Supreme Court held on June 3rd (1946) by a six-to-one decision announced by Justice Stanley F. Reed that racial segregation of bus passengers, as authorized by law in 10 States (called 'Jim Crowismsl after a negro character in an old negro folk song), was unconstitutional on buses crossing State borders. The Court dealt with the case of Irene Morgan, a negro girl, who, when travelling in a bus going from Virginia to Maryland, had been arrested and fined 10 dollars for refusing to change her seat and sit in the rear marked 'For Coloured Patrons' (as is general in trolley cars, buses, and trains in the South), thus violating the Virginia 'Jim Crowism' statute. The Virginia Supreme Court of Appeal upheld the conviction, and in the hearing before the Supreme Court the State of Virginia defended the segregation law as 'recognition of human nature' arguing that it prevented racial clashes that might endanger public safety. The Supreme Court decided, however, that there being no Federal Act dealing with the separation of races in inter-State transportation, the Virginian Statute interferes with the freedom of inter-State commerce which required 'uniformity' in the seating arrangements for the different races in inter-State travel, and for this reason was unconstitutional".

It has already been pointed out that the "equal protection" clause, as interpreted by the Supreme Court, does not prevent special legislation for special classes provided the classification is not arbitrary. It has also been pointed out that the task of deciding whether the clause, in a given case, is arbitary or not, is not easy. An illustration of this difficulty has already been given in the matter of anti-Trust laws ; a few others in the sphere of taxation may now be mentioned. In 1935, in the case *Stewart Dry Goods Co. v. Lewis* (294 U. S. 550), the Supreme Court held *invalid* a Kentucky law imposing a graduated tax upon annual gross sales of retail merchants ranging from 1/20 per cent upon the first $400,000 of gross sales to 1 per cent on sales over $1,000,000. In the language of the Court, "The law arbitrarily classified these vendors for the imposition of a varying rate of taxation, solely by reference to the volume of their transactions, disregarding the absence of any reasonable relation between the chosen criterion of classification and the privilege the enjoyment of which is said to be the subject taxed."

But in the previous year (1934), in *Fox v. Standard Oil Co. of New Jersey* [294 U. S. 87], the Court had, by a majority of 5 to 4, *upheld* a West Virginia graduated tax running from $2 for one store to $250 for each store in excess of 75, saying that a series of gasoline stations maintained in a single ownership has the benefit of chain organization and that therefore the graduation of the tax according to the number of stores owned was not arbitrary. Again, in 1940, in *Madden v. Kentucky* [309 U. S. 83] the Court, with two dissentient Judges, *upheld* a Kentucky statute imposing on its citizens an annual *ad valorem* tax on their deposits in banks *outside the State* at the rate of 50 cents per 100 dollas and on their deposits in banks *within the State* at the rate of 10 cents per 100 dollars. This had been attacked on the ground, among others, that it discriminated between those who deposited their money in Kentucky banks and those who deposited their money in banks outside Kentucky and thus offended against the "equal protection" clause. The Court observed (1) that

in taxation, even more than in other fields, the legislature possesses the greatest freedom in classification, (2) that the presumption of validity attaching to legislation can be overcome only by the most explicit proof that the classification adopted by the legislature was "a hostile and oppressive discrimination against particular persons and classes", and (3) that in this case the treatment accorded to the two kinds of deposits *may have* resulted from the differences in the difficulties and expenses of tax collection.

We may now turn to another of the fundamental rights enunciated in the Constitution of the U. S. A. In the Fifth Amendment, which applies to the Centre, it is declared that no persons shall be deprived of life, liberty or property without due process of law; and in the Fourteenth Amendment, there is a similar declaration applying to the States : "Nor shall any State deprive any person of life, liberty or property without due process of law". A vast volume of case law has gathered round this "due process" clause, of which it has been said that it is "the most important single basis of judicial review today". At first it was regarded only as a limitation on procedure and not on the substance of legislation ; but it has now been settled that it applies to matters of substantive law as well. In fact, the phrase "without due process of law" appears to have become synonymous with "without just cause", the Court being the judge of what is "just cause" ; and since the object of most legislation is to promote the public welfare by restraining and regulating individual rights of liberty and property, the Court can be invited, under this clause, to review almost any law. The Court has upheld laws providing for compulsory vaccination (1905) ; for compulsory sterilization of mental defectives (1927) ; for commitment of persons with a "psychopathic personality" (1940) ; but not a law forbidding the use of shoddy in the manufacture of mattresses (1926), nor one requiring every pharmacy to be owned by a licensed pharmacist (1928). The usual issue in such cases is whether what is called the "police power" of the State—in other words, the inherent power of every State "to prescribe regulations to promote the health, peace, morals, education and good order of the people" justifies the particular law under consideration. Since there is no certain criterion in these matters, the Court's verdict may vary from time to time. Thus in *Lochner v. New York* [1905, 198 U. S. 45], a New York law forbidding more than 60 hours' work in any week or an average of more than 10 hours per day in bakeries or confectionaries was held unconstitutional as infringing the liberty of the individual without due process of law. The judgment of the majority of the Court (5 to 4) observed :—

"The question whether this act is valid as a labor law, pure and simple, may be dismissed in a few words. There is no reasonable ground for interfering with the liberty of person or the right of free contract, by determining the hours of labor, in the occupation of a baker. There is no contention that bakers as a class are not equal in intelligence and capacity to men in other trades or manual occupations, or that they are not able to assert their rights and care for themselves without the protecting arm of the state, interfering with their independence of judgment and of action. They are in no sense wards of the state. Viewed in the light of a purely labor law, with no reference whatever to the question of health, we think that a law like the one before us involves neither the safety, the morals, nor the welfare of the public, and that the interest of the public is not in the slightest degree affected by such an act. The law must be upheld, if at all, as a law pertaining to the health of the individual engaged in the occupation of a baker. It does not affect any other portion

of the public than those who are engaged in that occupation. Clean and wholesome bread does not depend upon whether the baker works but ten hours per day or only sixty hours a week. The limitation of the hours of labor does not come within the police power on that ground." But twelve years later, in *Bunting v. Oregon* [243 U. S. 426], the Court, without mentioning the Lochner case, upheld a ten-hour law for factories. Again, in 1923, *Adkins v. Children's Hospital* [261 U. S. 525], the Court by a narrow majority overthrew an Act of Congress prescribing a minimum wage for women and children in the district of Columbia. But in 1937, in *West Coast Hotel Co. v. Parrish*, the Court, by a bare majority (5 to 4), overruled the Adkins case and upheld a Washington Act authorizing the fixing of minimum wages for women and minors. There has been similar oscillation in regard to laws providing for price-control and Dodd's comment on this line of cases is : " The question is one as to the efficient action of the government, while at the same time protecting the essential rights of the individual. The cases printed below will indicate that the court has wavered from one position to another, and may now be wavering back to its earlier position." [Dodd's ' Cases and Materials on Constitutional Law " Third Edition, *p.* 649].

We are now in a position to realise some of the difficulties of the problem of fundamental rights. To enunciate them in general terms and to leave it to the Courts to enforce them will have the following consequences :—

(1) The Legislature not being in a position to know what view the Courts will take of a particular enactment the process of legislation will become difficult.

(2) There will be a vast mass of litigation about the validity of laws and the same law that was held valid at one time may be held invalid at another or *vice versa* : the law will therefore become uncertain.

(3) The Courts, manned by an irremoveable judiciary not so sensitive to public needs in the social or economic sphere as the representatives of a periodically-elected legislative body, will, in effect, have a veto on legislation exercisable at any time and at the instance of any litigant.

As against these disadvantages and compensating for them, there will undoubtedly be the advantage that racial and religious minorities will feel some security. Many European Constitutions contain a declaration of fundamental rights, but there is often no Court with power to pronounce an offending law unconstitutional. Even in Switzerland, where the Federal Court is competent to entertain complaints of violation of the constitutional rights of citizens, the Constitution requires the Court to apply the laws passed by the Federal Assembly. [*See* Article 113 of the Swiss Constitution.]

The difference between the Supreme Court of the United States and the Swiss Federal Court in this respect is explained thus by Adams and Conningham :—

" Every Judge of the Supreme Court of the United States is bound to treat as void all legislative Acts, whether proceeding from Congress or from the State legislatures, which are inconsistent with the Federal Constitution, or are in excess of the legislative powers which that Constitution confers. The Supreme Court only inquires into the validity of Acts of Congress for the purpose of determining a question brought before it in a legal proceeding

The Federal Tribunal, on the contrary, cannot inquire into the constitutional character of a law or a resolution of a general nature which has been adopted by the Federal Assembly, any more than of a treaty ratified by

that body. It is bound by the Constitution to accept those laws and resolutions, and to apply them to the cases submitted to its judgment.

The reason is clear. The measures which, after being framed by the Federal Council and adopted by the Federal Assembly, are accepted by the people, either tacitly or through the Referendum, thus obtain the sanction of the Swiss people. Hence the Federal Tribunal must bow to the decision of the people, and regard all such measures as constitutional and inviolable. ["The Swiss Confederation" by Adams and Cunningham, 1889, *pp.* 267, 268.]

The Swiss Federal Court can, however, examine the constitutionality of *cantonal* laws.

The Irish Constitution of 1937 has followed the plan of separating "fundamental rights" from "directive principles of social policy"; the former are, to some extent, enforceable by the Courts, but the latter not at all. The former are set out in Article 40-44 of the Constitution and the latter in Article 45, which begins thus: "The principles of social policy set forth in this article are intended for the general guidance of the Oireachtas (the Irish Parliament). The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and *shall not be cognisable by any Court under any of the provisions of this Constitution.*" There is no similar provision in Article 40-44 expressly excluding the jurisdiction of the Courts. Some of the fundamental rights appear to be couched in terms which could be enforced by the Courts: *e.g.*, section 40(6)2° provides that laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious, or class discrimination; section 44(2)4° prescribes that legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations; and so forth. Laws contravening these guarantees will doubtless be pronounced *ultra vires*.

But a provision such as "No citizen shall be deprived of his personal liberty *save in accordance with law*" occurring in section 40(4)1° cannot invalidate any law and is really meaningless as a guarantee against oppressive laws after enactment. Possibly it has a moral value and may afford ground for a referendum before the Bill becomes law, for under Article 27, Bills may be referred to the people, if they involve proposals of national importance. There is also a provision in Article 26(1)1° enabling the President, after consulting the Council of State (which is a sort of Privy Council), to refer any Bill to which the Article applies to the Supreme Court for a decision whether the Bill or any specified provision thereof is unconstitutional.

In the Austrian Constitution of 1920, certain fundamental rights were declared [*e.g.*, Article 7 declared "All citizens of the Federation shall be equal before the law. Privileges of birth, sex, position, class and religion are abolished"] and there was also provision for a Constitutional Court in addition to an Administrative Court and the ordinary Courts of law. The ordinary Courts were not to inquire into the validity of any duly promulgated law [Article 89(1)], but the Constitutional Court was competent in certain circumstances to decide all such questions and to annul any laws, which it adjudged unconstitutional (Article 140); in addition, the Constitutional Court was expressly given power to entertain complaints of violation, by any administrative authority, of rights guaranteed under the

Constitution after the matter had been taken through all the stages of administrative appeal. [Article 144.] The net result of these provisions appears to have been that the Constitutional Court could annul a law as unconstitutional at the instance of the Federal Government or a Provincial Government [as the case might be] and to annul any administrative decision as unconstitutional at the instance of any aggrieved individual. The Constitutional Court consisted of a President, a Vice-President, and a number of other members ; the President, the Vice-President, and one half of the other members were elected by the lower House and the other half of the other members by the Upper House of the Federal Legislature. They were to hold office for life. Further provisions as to the organization and procedure of the Constitutional Court were to be prescribed by Federal legislation.

In the next Part of this pamphlet an attempt will be made to analyse the fundamental rights embodied in a few typical Constitutions and to suggest which of them may be included in the new Indian Constitution and what form they should take.

FUNDAMENTAL RIGHTS (II)

We may now proceed to analyse the fundamental rights embodied in the Constitutions of some of the more important countries of the world and to frame the draft of a Bill of Rights for incorporation in the Indian Constitution. For this purpose, it is useful to recognise a distinction between two broad classes of rights : there are certain rights which require positive action by the State and which can be guaranteed only so far as such action is practicable, while others merely require that the State shall abstain from prejudicial action. Typical of the former is the right to work, which cannot be guaranteed further than by requiring the State, in the language of the Irish Constitution, "to direct its policy towards securing that the citizens may, through their occupations, find the means of making reasonable provision for their domestic needs"; typical of the latter is the right which requires, in the language of the American Constitution, that "the State shall not deprive any citizen of his liberty without due process of law". It is obvious that rights of the first type are not normally either capable of, or suitable for, enforcement by legal action, while those of the second type may be so enforced. Both classes of rights are mentioned together under the head of "Fundamental Rights" in certain Constitutions, *e.g.*, in the Constitution of the USSR and in the Weimar Constitution of the German Reich, possibly because neither was intended to be enforced by legal action. But the distinction is clearly recognised (though not uniformly pursued) in the Irish Constitution, which deals first with "fundamental rights" strictly so called, and then with "directive principles of social policy", the latter being expressly excluded from the purview of the courts. A similar distinction is recognised in Dr. Lauterpacht's "International Bill of the Rights of Man" (1945). The substantive provisions of the Bill are in two parts, Part I dealing with rights meant to be enforced by the ordinary courts and Part II dealing with rights incapable of or unsuitable for such enforcement. We may usefully follow this plan and separate the two classes of rights : Part A may deal with fundamental principles of State policy and Part B with fundamental rights strictly so called. The following draft is suggested for Part A ; it is meant to be illustrative rather than exhaustive :—

"PART A.

"The principles set forth in this Part are intended for the general guidance of the appropriate legislatures and governments in India (hereinafter referred to collectively as 'the State'). The application of these principles in legislation and administration shall be the care of the State and shall not be cognisable by any court.

"1. The State shall promote international peace and security by the elimination of war as an instrument of national policy, by the prescription of open, just and honourable relations between nations, by the firm establishment of the understandings of international law as the actual rule of conduct among governments and by the maintenance of justice and the scrupulous respect for treaty obligations in the dealings of organised people with one another.

"2. The State shall promote internal peace and security by the elimination of every cause of communal discord.

"3. The State shall, as far as possible, secure to each citizen—

(1) the right to work,

(2) the right to education,

(3) the right to maintenance in old age and during sickness or loss of capacity to work,

(4) the right to rest and leisure.

In particular, the State shall make provision for free and compulsory primary education.

"4. The State shall promote with special care the educational and economic interests of the weaker sections of the people and, in particular, of the Scheduled castes and the aboriginal tribes, and shall protect them from social injustice and all forms of exploitation.

"5. The State shall protect the culture, language and script of the various communities and linguistic areas in India.

"6. The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties.

"7. The State shall ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that they shall not be forced by economic necessity to take up occupations unsuited to their sex, age or strength."

It is obvious that none of the above provisions is suitable for enforcement by the courts. They are really in the nature of moral precepts for the authorities of the State. Although it may be contended that the Constitution is not the proper place for moral precepts, nevertheless constitutional declarations of policy of this kind are now becoming increasingly frequent. (See the Introduction to the I.L.O., publication "Constitutional Provisions concerning Social and Economic Policy", Montreal, 1944.) They have at least an educative value. The first clause is taken from the Declaration of Havana made in 1939 by the representatives of the Governments, employers and workpeople of the American Continent. The second, fourth and fifth clauses are peculiary needed in India. The third clause embodies certain objectives of social and economic policy which are now widely recognized ; see, for example, Articles 118-121 of the Constitution of the USSR and Articles 42 and 45 of the Irish Constitution. The sixth clause relating to nutritional and other standards is taken from the recommendations of the United Nations Conference on Food and Agriculture, 1943, and is of special importance to India. The seventh clause is taken from Article 45 (4) 2° of the Irish Constitution, 1937.

PART B.

We now come to the other Part, Part B, relating to fundamental rights strictly so called, that is to say, rights which are meant to be enforced by legal action. Here we enter upon controversial ground.

"There are very few countries which have fully adopted the system of judicial review enabling courts to act in that capacity in the matter of the fundamental rights of the individual guaranteed by the constitution. In the

United States, by long-established practice—though not in pursuance of any express provision of the Constitution—the Supreme Court has exercised that power since its decision in the historic case of *Marbury v. Madison*. This is also the position, by virtue of an express constitutional provision, in Brazil, Venezuela, and some other Latin-Am ican countries, in Czechoslovakia, Rumania, and the Irish Free State. In a number of countries—such as Australia, Canada, and Germany (in the Constitution of 1919)—judicial review is limited largely to questions relating to the respective legislative competence of the Federation and of the Member States.

"On the other hand, in many States the constitution specifically excludes the interpretation of laws—and *a fortiori* any declaration of their invalidity—from the purview of the judiciary. Judicial review of legislation is contrary to the constitutional doctrine of France, and above all, of Great Britain, where the supremacy of Parliament is absolute. Although the Constitution of Soviet Russia of 1923 gave (in Article VII, sec. 43) the Supreme Court of the Union the power to render decisions, at the request of the Central Executive Committee of the Union, on the constitutionality of any regulations made by the Republics of the Union, no such powers have been conferred upon it by the Constitution of 1936.....

"The doctrine of judicial review has been defended with fervent approval by great lawyers in the United States and elsewhere. Daniel Webster and Francis Lieber praised it as a bulwark of liberty. Lord Bryce was of the view that "there is no part of the American system which reflects more credit on its authors or has worked better in practice." Dicey was a strong believer in the doctrine of the supremacy of Parliament in England. But he was emphatic that it was "the glory of the founders of the United States"—in fact the doctrine of judicial review was adopted a quarter of a century after the foundation of the Republic—to have established a system of protection of the Constitution essential to a federal system (actually, the exercise of the power of judicial review by the Supreme Court has borne little relation to the fact of the federal structure of the United States). Tocqueville praised it as most favourable to liberty and to public order. After one hundred and forty years of operation it has the unqualified support of a large—perhaps predominant—section of American legal opinion as a bulwark of liberty of the people against the rashness and the tyranny of short-lived legislative majorities.

"On the other hand, the doctrine of judicial review has found from its very inception violent opponents and detractors in the country of its origin. Jefferson and Madison denounced it. Great teachers of constitutional law, such as J. B. Thayer, have drawn attention to the dangers of attempting to find in the Supreme Court—instead of in the lessons of experience—a safeguard against the mistakes of the representatives of the people. That criticism has grown in the last fifty years to the point of bitter denunciation as the result of the exercise of the power of judicial review in a manner which, in the view of many, has made the Supreme Court a defender of vested rights and social statics. Some French jurists, who were attempting to find a remedy for the absence of an effective guarantee of fundamental rights in their own constitution have come to regard the experience of judicial review in the United States as a sufficient deterrent against introducing judicial review in France. In contries other than the United States, in which judicial review of legislation is recognized, it has been exercised only in rare cases for the protection of the rights of the individual." [P. 186-190, Lauterpacht. An International Bill of the Rights of Man, 1945.]

In the peculiar circumstances of India, there may well be a demand for a Bill of Rights enforceable in the courts. There is ample material available for the preparation of such a Bill, but its drafting will require great care and must be reserved for a future occasion.

FUNDAMENTAL RIGHTS (III)

INTRODUCTION

This brochure is the third of the Pamphlets issued on the subject of Fundamental Rights. Here, provisions regarding Fundamental Rights in thirteen selected countries, namely, United States, Switzerland, Weimar Germany, Czechoslovakia, Jugoslavia, Danzig, Soviet Russia, Ireland, China, Canada, Australia, South Africa and India, have been brought together for convenience of reference. A few of the Fundamental Rights of certain other countries which do not find a place in the constitutions of the above States have also been included as they are of interest from the point of India. They are classified subject-wise under thirteen different heads. Each of the chapters is self-contained, the text ofall the provisions coming under a head being included therein.

Great difficulty has been experienced in selecting provisions for inclusion as there is no absolute standard as to what constitues a Fundamental Right, and the basis of classification varies from country to country. The method adopted in this brochure is to recognise as a Fundamental Right any provision which is so regarded in any of the constitutions. The constitutions of Weimar Germany, Czechoslovakia, Jugoslavia, Danzig, Soviet Russia, Ireland and China have special chapters of Fundamental Rights and Duties of citizenship. Where a provision has been taken from outside these chapters a star (*) is placed over the Article or Section in question. The constitutions of the U.S.A., Switzerland, Canada, South Africa, Australia and India, have no special chapters on Fundamental Rights. Here, a star (*) over an Article or Section indicates that it is not one of the provisions commonly regarded as a Fundamental Right. Again, Section 45 of the Irish Constitution (Directive Principles of Social Policy), Chapter I of the Constitution of the U.S.S.R. (The Organisation of Society), Part III of the Jugoslav Constitution (Social and Economic Provisions), Chapter VI of the Czechoslovak Constitution (Protection of National, Religious and Racial Minorities), and Chapter I (General Principles) and Chapter XIII (Basic National Policies) of the recent Chinese Constitution are more in the nature of directives to the Legislature and statements of national objectives than of positive rights conferred on the citizen. Where a provision has been taken from these Chapters two stars (**) are placed above the Article or Section in question.

For use along with this brochure a Chart giving cross references to Fundamental Rights has been prepared and included in the end as an appendix. The text of the Articles or Sections mentioned therein can be had from the corresponding chapter of this brochure. The provisions relating to the constitutions of Czechoslovakia and Jugoslavia have been taken from the " Select Constitutions of the World ": Ed. by Mr. B. Shiva Rao, 1934. The provisions relating to the Chinese Constitution, which was adopted in December, 1946, have been taken from an English version of it kindly furnished by the Chinese Embassy. The provisions of the other constitutions have been taken from Constitutional Precedents (Second Series) issued by this Office.

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CHAPTER I.

CITIZENSHIP AND NATIONALITY

U.S.A.

Article XIV—Section 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities, of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SWITZERLAND

***Article 43.**—Para 1.—Every citizen of a Canton is a Swiss citizen.

Article 44.—Para 2.—The rules applicable to the acquisition and loss of the Swiss nationality shall be fixed by federal legislation.

Para 3.—Federal legislation may decide that the child born of foreign parents is a Swiss citizen on his birth, when the mother was of Swiss origin and when the parents had their ordinary residence in Switzerland at the time of the birth of the child. The child acquires the right of citizenship in the commune of origin of his mother.

Para 4.—The principles regulating re-integration in the right of citizenship shall be laid down by federal legislation.

Article 54.—Para 4.—A wife acquires on marriage the citizenship of the commune of her husband.

WEIMAR GERMANY

Article 110.—Para 1.—Nationality in the Reich and the States is acquired and terminated as may be provided by the law of the Reich. Every subject of a State is also a subject of the Reich.

CZECHOSLOVAKIA

Article 4.—1. The national allegiance of all citizens of the Czechoslovak Republic is one and indivisible.

2. The conditions governing the acquisition, the rights and duties, and the termination of citizenship in the Czechoslovak Republic, shall be determined by law.

3. A citizen or subject of a foreign State cannot at the same time be a citizen of the Czechoslovak Republic.

JUGOSLAVIA

Article 4.—There shall be but one nationality in the Kingdom. All citizens shall be equal before the law. Nobility, titles or other privileges of birth shall not be recognised.

DANZIG

Article 72.—The nationality of the State shall be acquired and forfeited in accordance with the provisions laid down by law.

The principles of the draft of the law contemplated by this Article shall be submitted for the examination of the League of Nations by May 23rd 1921 at the latest.

SOVIET RUSSIA

***Article 21.**—A single Union citizenship is established for all citizens of the U.S.S.R.

Every citizen of a Union Republic is a citizen of the U.S.S.R.

IRELAND

***Section 9.**—(1) On the coming into operation of this constitution any person who was a citizen of Saorstat Eireann immediately before the coming into operation of this constitution shall become and be a citizen of Ireland.

CHINA

****Article 3.**—Persons possessing the nationality of the Republic of China are citizens of the Republic of China.

CHAPTER II.

RIGHTS OF FOREIGN CITIZENS

CZECHOSLOVAKIA

***Article 106.**—2. All persons residing in the Czechoslovak Republic shall enjoy within its territory in equal measure with the nationals of the Republic, full and absolute protection of life and liberty without distinction of origin, nationality, language, race or religion. Exceptions to this principle may be made only in cases recognised by international law.

Article 122.—Every inhabitant of the Czechoslovak Republic shall enjoy in the same degree as nationals of the Republic the right to practise in public or in private any faith, religion or creed whatsoever, so far as the practice thereof does not violate the law or public order and morality.

U.S.S.R.

Article 129.—The U.S.S.R. affords the right of asylum to foreign citizens persecuted for defending the interests of the working people, or for their scientific activities, or for their struggle for national liberation.

ALBANIA (1928)

Section 204.—Only Albanian subjects may be employed in Government positions. Foreigners may be employed as specialists, but their contracts may not exceed 5 years' duration.

Section 207.—Only Albanian subjects may open private schools of various kinds, provided they conform to the law, the principles and the programmes adopted by the State or the State schools and are always under the effective control of the Government.

Foreigners may open only technical and agricultural schools with theoretical and practical programmes in conformity with the laws.

Albanian religious communities may open religious schools with the permission of the competent Ministry and in accordance with the law. The number of schools required for each community and the number of students in these schools shall be fixed by the competent Ministry by decisions of the Council of Ministers.

Section 215.—All foreigners in Albania enjoy the right of protection for their persons and property except in cases provided by the law.

Foreigners can in no way acquire a title to rural property, nor can they own real estate in such areas adjacent to the State frontiers or the sea as are fixed by Royal Decree on the decision of the Council of Ministers. The provision does not prejudice the rights already acquired.

Foreigners have only the right to the value of such lands, when sold, and can be owners only of so much as is necessary for the erection of factories or for purposes of communications.

POLAND (1921)

Section 95.—The Republic of Poland guarantees on its territory, to all, without distinction of extraction, nationality, language, race, or religion, full protection of life, liberty, and property.

Foreigners enjoy, on condition of reciprocity, rights equal to those of citizens of the Polish State, and have duties equal to those of such citizens, unless statutes expressly require Polish citizenship.

PORTUGAL (1933)

Section 7.—*Sole Paragraph.* Foreigners resident in Portugal shall enjoy the same rights and guarantees, unless the law determines otherwise. This shall not apply to political and public rights which correspond to a duty towards the State, although, as regards public rights, reciprocity of advantages granted to Portuguese nationals by other States shall be observed.

CHAPTER III

RIGHTS TO FREEDOM

U.S.A.

(1787).

*Article I, Section 9.—(2) The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(3) No bill of attainder or *ex post facto* law shall be passed.

(1787).

*Article I, Section 10 (1).—No State shall enter into any treaty, alliances or confederation, grant letter of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

(1787).

*Article III, Section 2 (3).—The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed, but when not committed within any State the trial shall be at such place or places as the Congress may by law have directed.

(1791).

Article I.—The Congress shall make no law respecting an establisment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

(1791).

Article II.—A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

(1791).

Article III.—No soldier shall, in time of peace, be quartered in any house without the consent of the owner, nor in time of war but in a manner to be prescribed by law.

(1791).

Article IV.—The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched, and the persons or things to be seized.

(1791).

Article V.—No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grant by jury except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be

subject for the same offence to be twice put in jeopardy of life or limb ; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law ; nor shall private property be taken for public use without just compensation.

(1791).

Article VI.—In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law and to be informed of the nature and cause of the accusation; to be confronted with the witness against him; to have compulsory process for obtaining witnesses in his favour, and to have the assistance of counsel for his defence.

(1791).

Article VII.—In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any Court of the United States than according to the rules of the common law.

(1791).

Article VIII.—Excessive bail shall not be required, nor excessive fine imposed. nor cruel and unusual punishments inflicted.

(1865).

Article XIII, Section 1.—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.—The Congress shall have power to enforce this article by appropriate legislation.

SWITZERLAND

Article 44—Para 1.—No Swiss citizen shall be expelled from the territory of the Confederation or from his canton of origin.

Article 55.—Liberty of the press is guaranteed, but the Cantons may by legislation take measures necessary for the prevention of abuses. Such laws must be submitted to the Federal Council for approval. The Confederation may also prescribe penalties in order to suppress abuses of the liberty of the press directed against the Confederation or Federal authorities.

Article 56.—Citizens have the right to form associations provided that the objects and methods of such associations are not unlawful or dangerous to the State. Cantonal legislation will make the necessary provision for the prevention of abuses.

Article 58.—No person may be withdrawn from his proper Judge. Accordingly, extraordinary tribunals may not be established.

Ecclesiastical jurisdiction is abolished.

Article 65.—Sentence of death may not be pronounced for any political offence

***Article 106.**—In penal cases trial is by jury.

*Article 105.—Extraordinary Courts are prohibited. No one may be withdrawn from his legal judge. Legal regulations regarding Courts Martial and Summary Military Courts are not affected by the above. Military Courts of Honour are abolished.

*Article 106.—Military jurisdiction is abolished, except in time of war and on board warships. Details are regulated by a law of the Reich.

Article 112.—2. All nationals of the Reich within and beyond its territory are entitled to claim the protection of the Reich in relation to a foreign power.

3. No German may be handed over to a foreign Government for prosecution or punishment.

Article 114.—Personal liberty is inviolable. No encroachment on or deprivation of personal liberty by any public authority is permissible except in virtue of a law.

Persons, who have been deprived of their liberty, shall be informed—at the latest on the following day—by what authority and on what grounds the deprivation of liberty has been ordered; opportunity shall be given to them without delay to make legal complaint against such deprivation.

Article 115.—The residence of every German is an inviolable sanctuary for him; exceptions are admissible only in virtue of laws.

Article 116.—No punishment may be inflicted for any action unless the action was designated by law as punishable, before it was committed.

Article 117.—The secrecy of correspondence and of the postal, telegraph and telephone services is inviolable. Exceptions may be permitted only by law of the Reich.

Article 118.—Every German has the right, within the limits of general laws to express his opinion freely by word of mouth, writing, printed matter or picture, or in any other manner. This right must not be affected by any conditions of his work or appointment and no one is permitted to injure him on account of his making use of such rights.

No censorship shall be enforced but restrictive regulations may be introduced by law in reference to cinematograph entertainments. Legal measures are also admissible for the purpose of combating bad and obscene literature as well as for the protection of youth in public exhibitions and performances.

Article 123.—All Germans have the right without notification or special permission to assemble peaceably and unarmed.

Open-air meetings may be made notifiable by a law of the Reich and in case of direct danger to public security may be forbidden.

Article 124.—All Germans have the right to form unions and associations for purposes not in contravention of the penal laws. This right may not be restricted by preventive regulations. The same provisions apply to religious unions and associations.

Every union is at liberty to acquire legal rights in accordance with the provisions of the Civil Code. These rights shall not be refused to a union on the ground that its objects are of political, social-political or religious nature.

Article 130.—Freedom of political opinions and the free right of association are guaranteed to all officials.

Article 137.—(2) Freedom of association is guaranteed to religious bodies. The union of religious bedies within the territory of the Reich is subject to no restriction.

Article 142.—Art and science, and the teaching thereof are free.

The State guarantees their protection and participates in furthering them.

CZECHOSLOVAKIA

***Article 94.**—2. No person may be tried by any other than his legal judge.

3. Extraordinary Courts may not be established save for criminal prosecutions in cases previously determined by law and for a limited period.

***Article 95.**—3. The powers and duties of juries shall be determined by special legislation.

4. Trial by jury may be temporarily suspended in cases provided for by law.

5. The jurisdiction of Military Courts may not be extended to the civil population save in accordance with legal regulations and only in time of war and in respect of acts committed at such time.

Article 107.—1. Personal liberty shall be guaranteed. Detailed provisions shall be made by a law which shall form part of this Constitutional Charter.

2. Deprivation of or limitation upon, personal liberty shall not be permitted save in accordance with law. Public authorities may not require personal service from any citizen save in cases provided for by law.

Article 111.—2. Penalties may not be imposed or threatened save in accordance with law.

Article 112.—1. Every dwelling shall be inviolable.

2. Detailed provision shall be made by a law which shall form part of this Constitutional Charter.

Article 113.—1. The freedom of the Press and the right to meet peaceably and without arms and to form associations shall be guaranteed. It is therefore in principle forbidden to subject the Press to any preliminary censorship. The exercise of the rights of meeting and forming associations shall be regulated by law.

2. An association may not be dissolved unless it acts in violation of the criminal law or contrary to public peace and order.

3. Restrictions may be imposed by law, particularly as regards meetings in public places, the formation of associations for purposes of profit, and the participation of foreigners in political associations. The law may likewise determine what restrictions may be placed on the application of the principles of the preceding Sections in case of war or of the outbreak of internal troubles seriously threatening the republican form of the State, the constitution or public peace and order.

Article 114.—1. The right of association for the purpose of safeguarding and ameliorating economic conditions and the status of workers and employees shall be guaranteed.

2. All acts, whether of individuals or associations, which constitute an intentional violation of this right, are forbidden.

Article 116.—1. The secrecy of correspondence shall be guaranteed.

2. Details shall be determined by law.

Article 117.—1. Every person shall be free within the limits permitted by law to express his opinions by speech, writing, print, picture or other similar means.

2. The same freedom shall apply to legal persons within the limits of their legal powers.

3. No person may be prejudiced in his interests as worker or employee in consequence of the exercise of this right.

Article 118.—Artistic activities and scientific research and the publication of the results thereof are free in so far as they do not violate the criminal law.

JUGOSLAVIA

Article 5.—The liberty of the individual shall be guaranteed. No person may be subjected to any judicial interrogation, or placed under arrest, or be in any other way deprived of his liberty, save as provided by law.

No person may be placed under arrest for any crime or offence whatever save by order of a competent authority given in writing and stating the charge. This order must be communicated to the person arrested at the time of arrest or the latest within twentyfour hours of the arrest. An appeal against the order for arrest may be lodged in the competent Court within three days. If no appeal has been lodged within this period the police authorities must as a matter of course communicate the order to the competent Court within the twenty-four hours following. The Court shall be bound to confirm or annul the arrest within two days from the communication of the order, and its decision shall be given effect forthwith.

Public officials who infringe these provision shall be punished for illegal deprivation of liberty.

Article 6.—No person may be tried save by a competent Court.

Article 7.—No person may be tried without having been previously interrogated by the competent authority or having been afforded an opportunity by legal means to defend himself.

Article 8.—Penalties shall be determined by law. A penalty may be inflicted only for acts previously designated by law as entailing that particular penalty.

Article 9.—Capital punishment may not be inflicted for purely political crimes.

This provision shall not apply to criminal offences or attempted offences against the person of the Soverign or the royal family, for which capital punishment is provided in the Code.

This provision shall not apply also to cases in which in addition to the purely political crime there is another offence punishable under the Code by capital punishment nor the cases in which capital punishment is provided for by the Military Code.

Article 11.—Every dwelling shall be inviolable.

The authorities may not make any search or investigation of the domicile of any citizen save in such cases as may be permitted by law, and in the manner prescribed by law.

Before any such action is taken, the authorities must present to the person whose domicile is to be searched the written warrant from the police authority in virtue of which the search is to be made. An appeal against this warrant may be made to a Court of First Instance, but this appeal shall not suspend the carrying out of the search. Every search shall be made in the presence of two citizens.

Immediately after the search, the authorities must deliver to the person, whose domicile has been searched, a certificate stating the result of the operation, and a signed list of any articles seized for the purpose of police proceedings.

Officers of the police forces may not enter any private dwelling at night, save in cases of extreme urgency, or when a call for help is made from the dwelling. A representative of the municipality and two citizens summoned for the purpose shall be present at any such entry, save in the case of a call for help.

Officers of the police forces who are guilty of any infringement of these provisions shall be punished for violation of a dwelling.

Article 13.—The Press shall be free.

No preventive measures may be taken to hinder the publication, sale and distribution of any writings or newspapers. Censorship may be instituted only in time of war or mobilization and solely in cases previously provided for by law. The distribution and sale of journals and printed matter may be prohibited if they contain any defamation of the Sovereign or members of the royal family, of heads of foreign States or of the National Assembly or direct appeals citizens to change the Constitution or the laws of the country by force or serious violations of public morality. In any such case, the authorities must within twenty-four hours of the seizure of the journals or printed matter lodge the goods seized in Court and the Court must, also within twenty-four hours, confirm or annul the seizure.

Failing confirmation by the Court the seizure shall be deemed to be cancelled. Questions of damages shall be considered by the ordinary Courts, independently of the decision of the Court with regard to the annulment of the seizure.

Author, editor, printer, publisher, proprietor and distributor shall be held responsible for Press offences. A special press law shall determine the nature and extent of the responsibility of these persons for offences committed. All press offences shall be tried by the ordinary Courts.

Article 14.—Citizens shall have the right to form associations, to assemble in meetings, and to take collective action. Detailed provisions as to these matters shall be prescribed by law. Citizens may not attend meetings armed. Meetings in the open air must be notified to the competent authority at least twenty-four hours in advance.

Citizens shall have the right of forming associations for purposes not contrary to law.

Article 17.—The secrecy of letters and telegraphic and telephonic communications shall be inviolable save in connection with criminal proceedings, mobilisation or war. Persons who violate the secrecy of letters or telegraphic or telephonic communications shall be punished according to law.

Article 33.—The right of workers to organise for the improvement of the conditions of labour shall be guaranteed.

DANZIG

Article 62.—Extraordinary tribunals shall not be permitted. No person shall be withdrawn from the jurisdiction of his lawful judge.

Article 74.—The liberty of the person shall be inviolable. No limitation or deprivation of personal liberty may be imposed by public authority, except by virtue of a law.

Persons who have been deprived of their liberty must be informed at the latest on the following day by what authority and on what grounds the deprivation of liberty has been ordered. Opportunity must immediately be given them to lodge objections against such deprivation of liberty.

Article 76.—2. Every national, whether within or outside the territory of the State, shall have the right to claim the protection of the State in his relations with foreign countries.

3. No national shall be handed over to a foreign Government for prosecution or punishment.

Article 78.—The secrecy of correspondence, as well as of the postal, telephone and telegraph services, shall be inviolable. Exceptions can only be made by legal enactment.

Article 79.—Every person shall have the right, within the limits of the law, to express his opinion by words, writing or in any other manner. He may not be obstructed in this right by any conditions of his work or appointment and no disadvantage of any kind may be imposed on him on account of his exercise of such right.

There shall be no censorship. Regulations for the conduct of cinematographs may, however, be made, in derogation from this law. Legislative measures shall be adopted to combat obscene or indecent literature, and to protect young persons at public representations and performances.

Article 84.—All nationals shall have the right, without notification and special permission, to assemble peaceably and without arms. Notice shall be given of open-air meetings and permission may be withheld in case of immediate danger to public security. Special provisions may be made for the protection of the popular Assembly. Notification of religious processions shall not be required.

Article 85.—All nationals shall have the right to form unions or associations, provided their objects are not in contravention of the penal laws. This shall also apply to religious unions and associations. Every union shall be at liberty to acquire legal personality in accordance with the provisions of the civil code. This right shall not be refused to any union on the ground that it has been formed for political, social-political or religious objects.

Article 86.—Every national has complete control over his house which is inviolable. Exceptions are only admissible when the law so provides.

Article 93.—Officials are servants of the community and not of a party. They are entitled to freedom of political opinion and freedom of association. They shall not be subjected to any restriction in this respect.

Article 101.—The arts and sciences and their teaching shall be free. The State shall afford them protection, and shall be bound to promote their interests in every way.

Article 113.—Freedom of association with the object of guaranteeing and improving conditions of labour and economic conditions shall be secured to all individuals and to all vocations. Any agreements and measures tending to restrict or obstruct such freedom are illegal.

U. S. S. R.

***Article 103.**—In all courts cases are tried with the participation of people's assessors, except in cases specially provided for by law.

Article 111.—In all courts of the U.S.S.R. cases are heard in public, unless otherwise provided for by law, and the accused is guaranteed the right to be defended by counsel.

Article 125.—In conformity with the interests of the working people, and in order to strengthen the socialist system, the citizens of the U.S.S.R., are guaranteed by law:—

(*a*) freedom of speech ;

(*b*) freedom of the press ;

(*c*) freedom of assembly, including the holding of mass meetings ;

(*d*) freedom of street processions and demonstrations.

These civil rights are ensured by placing at the disposal of the working people and their organisations printing presses, stocks of paper, public buildings, the streets, communications facilities and other material requisites for the exercise of these rights.

Article 126.—In conformity with the interests of the working people and in order to develop the organizational initiative and political activity of the masses of the people, citizens of the U.S.S.R. are ensured the right to unite in public organisation—trade unions, co-operative associations, youth organisations, sport and defence organisations, cultural, technical and scientific societies ; and the most active and politically most conscious citizens in the ranks of the working class and other sections of the working people unite in the Communist Party of the Soviet Union (Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organisations of the working people, both public and state.

Article 127.—Citizens of the U. S. S. R. are guaranteed inviolability of the person. No person may be placed under arrest except by decision of a court or with the sanction of a procurator.

Article 128.—The inviolability of the homes of citizens and privacy of correspondence are protected by law.

*Section 15—(5). The Oireachtas shall not declare acts to be infringements of the law which were not so at the date of their commission.

*Section 38—(1). No person shall be tried on any criminal charge save in due course of law.

(2) Minor offences may be tried by courts of summary jurisdiction.

(3) 1° Special courts may be established by law for the trial of offences in cases where it may be determined in accordance with such law that the ordinary courts are inadequate to secure the effective administration of justice and the preservation of public peace and order.

2° The constitution, powers, jurisdiction and procedure of such special courts shall be prescribed by law.

(4) 1° Military tribunals may be established for the trial of offences against military law alleged to have been committed by persons while subject to military law and also to deal with a state of war or armed rebellion.

2° A member of the defence forces not on active service shall not be tried by any court-martial or other military tribunal for an offence cognisable by the civil courts unless such offence is within the jurisdiction of any court-martial or other military tribunal under any law for the enforcement of military discipline.

(5) Save in the case of the trial of offences under section (2), section (3), or section (4) of this article no person shall be tried on any criminal charge without a jury.

(6) The provisions of articles 34 and 35 of this constitution shall not apply to any court or tribunal set up under section (3) or section (4) of this article.

Section 40 (3).—1° The State guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2° The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.

(4) 1° No citizen shall be deprived of his personal liberty save in accordance with law.

2° Upon complaint being made by or on behalf of any person that he is being unlawfully detained, the High Court and any and every judge thereof shall forthwith enquire into the same and may make an order requiring the person in whose custody such person shall be detained to produce the body of the person so detained before such court or judge without delay and to certify in writing as to the cause of the detention, and such court or judge shall thereupon order the release of such person unless satisfied that he is being detained in accordance with the law.

3° Nothing in this section, however, shall be invoked to prohibit, control or interfere with any act of the defence forces during the existence of a state of war or armed rebellion.

(5) The dwelling of every citizen is inviolable and shall not be forcibly entered save in accordance with law.

(6) 1° The State guarantees liberty for the exercise of the following rights, subject to public order and morality :—

(*i*) The right of the citizens to express freely their convictions and opinions.

The education of public opinion being, however, a matter of such grave import to the common good, the State shall endeavour to ensure that organs of public opinion, such as the radio, the press, the cinema, while preserving their rightful liberty of expression, including criticism of Government policy, shall not be used to undermine public order or morality or the authority of the State.

The publication or utterance of blasphemous, seditious or indecent matter is an offence which shall be punishable in accordance with law.

(*ii*) The right of the citizens to assemble peaceably and without arms.

Provisions may be made by law to prevent or control meetings which are determined in accordance with law to be calculated to cause a breach of the peace or to be a danger or nuisance to the general public and to prevent or control meetings in the vicinity of either House of the Oireachtas.

(*iii*) The rights of the citizens to form associations and unions.

Laws, however, may be enacted for the regulation and control in the public interest of the exercise of the foregoing right.

2° Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

CHINA

Article 8.—The freedom of person of the people shall be protected. Except arrest in cases of *flagrante delicto* which shall be otherwise provided by law, no arrest and detention may be effected unless through a judicial or a police organ in accordance with legal procedure. No trial and punishment may be effected unless by a law court in accordance with legal procedure. Arrest, detention, trial and punishment, effected not in accordance with legal procedure may be resisted.

When a person is arrested and detained on suspicion of having committed a crime, the organ effecting the arrest and detention shall inform in writing the person himself and his designated relatives and friends of the case of his arrest and detention, and shall, within 24 hours at the latest, hand him over to a competent court for trial. He himself or some other person may also petition the said competent court to demand from the organ responsible for the arrest, the surrender, within 24 hours, of his person to the court for trial.

The court shall not reject the petition referred to in the preceding paragraph, and also may not order the organ responsible for the arrest and detention to make an investigation and report first. The organ responsible for the arrest and detention shall not refuse to execute or delay in executing the writ of the court for surrender of the person for trial.

When a person is illegally arrested and detained by any organ, he himself or some other person may petition the court for an investigation, and the court shall not reject the petition and shall, within 24 hours, make the investigation from the organ responsible for the arrest and detention and deal with the case in accordance with law.

Article 11.—The people shall have the freedom of speech, teaching, writing and publication.

Article 12.—The people shall have the freedom of secrecy of correspondence.

Article 14.—The people shall have the freedom of assembly and of forming associations.

AUSTRALIA

Section 80.—The trial on indictment of any offence against any law of the Commonwealth shall be by jury, and every such trial shall be held in the State where the offence was committed, and if the offence was not committed within any State the trial shall be held at such place or places as the Parliament prescribes.

BELGIUM (1831)

Section 12.—Punishment by confiscation of property shall not be established.

GREECE (1911)

Section 14.—Only Greek citizens are allowed to publish newspapers.

CHAPTER IV

RIGHT TO FREE MOVEMENT

U. S. A.

(1868).

Article XIV : Section 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SWITZERLAND

***Article 43** —Para 4.—A Swiss citizen by settlement enjoys at his place of domecile all the rights of a citizen of the Canton together with the right of a citizen of the Commune. Participation in the property of communes of citizens and of corporations, and the right to vote in matters exclusively connected therewith, are excluded from these rights, unless otherwise provided by Cantonal legislation.

Article 44. —Para 1.—No Swiss citizen shall be expelled from the territory of the Confederation or from his canton of origin.

Article 45.—Every Swiss citizen has the right to settle in any part of Switzerland, subject to the production of a certificate of origin or similar document. The right of settlement may, by way of exception, be *refused* to, or *withdrawn* from persons who have been deprived of their civic rights as a result of a penal conviction.

The right of settlement may also be withdrawn from persons who have been repeatedly sentenced for grave mis-demeanours, and from persons who become a permanent burden upon public charity, and whose Commune or Canton of origin refuses to provide adequate assistance for them after having been officially requested to provide it.

In Cantons in which domiciliary relief is provided permission for settlement may be made conditional, in the case of citizens of the Canton, upon the person being capable of work and not having been a permanent charge upon public charity in their former domicile in the Canton of origin.

Every expulsion on account of poverty must be confirmed by the government of the Canton of domicile and notified in advance to the Canton of origin.

The Canton in which a Swiss citizen settles may not require from him any security or impose any special charge upon him in respect of such settlement. Similarly, Communes may not impose on Swiss citizens domiciled within their area any charges other than those imposed upon their own citizens.

The maximum chancery fee chargeable in respect of permits for settlement shall be determined by Federal law.

*Article 67.—Extradition from one Canton to another will be dealt with by Federal legislation, but extradition may not be made obligatory for political or press offences.

WEIMAR GERMANY

Article 111.—All Germans enjoy the right of change of domicile within the whole Reich. Every one has the right to stay in any part of the Realm that he chooses, to settle there, acquire landed property and pursue any means of livelihood. Restrictions may be imposed only by law of the Reich.

Article 112, Para. 1.—Every German is entitled to emigrate to countries outside the Reich. Emigration may be restricted only by law of the Reich.

CZECHOSLOVAKIA

Article 108.—1. Every Czechoslovak national may reside at will in any part of the Czechoslovak Republic, acquire real property therein and follow any occupation within the limitations prescribed by the general law.

2. Limitations may be imposed upon the exercise of this right only in the public interest and in accordance with legislation.

Article 110.—The right to emigrate may be restricted only by law.

JUGOSLAVIA

Article 10.—No citizen may be banished from the State. No citizen may be expelled from one part of the country to another nor obliged to reside in a specified place, save in such cases as may be expressly determined by law. No person may in any circumstances be expelled from his domicile without sentence by a court.

DANZIG

Article 75.—All nationals shall enjoy freedom of movement within the Free City and shall have the right to stay and to settle at any place they may choose, to acquire real property and to earn their living in any way. This right shall not be curtailed without legal sanctions.

Article 76.—Para. 1.—Every national shall be entitled to emigrate to other countries. Emigration cannot be restricted except by law.

Article 77.—Establishments set up by the State at the public expense in the interests of internal colonisation shall not be used to the prejudice of any particular nationality.

CHINA

Article 10.—The people shall have the freedom of domicile and of change of domicile.

ALBANIA (1928)

Section 202.—No hindrance can be placed in the way of travelling except as provided by law.

CHAPTER V.

RIGHTS TO EQUALITY

U. S. A.

(1787).

***Article I: Section 9 (8).**—No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever from any king, prince, or foreign State.

(1787).

***Article I: Section 10 (1).**—No State shall enter into any treaty, alliance or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin, a tender in payment of debts, pass any bill of attainder, *ex post facto* law, or law impairing the obligation of contracts, or grant any title of nobility.

(1787).

***Article IV: Section 2 (1).**—The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

(1865).

Article XIII: Section 1.—Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.—The Congress shall have power to enforce this article by appropriate legislation.

(1868).

Article XIV: Section 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property with out due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

(1870).

Article XV: Section 1.—The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

Section 2.—The Congress shall have power to enforce this article by appropriate legislation.

(1919).

Article XIX.—(1) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

(2) The Congress shall have power to enforce the provisions of this Article by appropriate legislation.

SWITZERLAND

Article 4.—All Swiss people are equal before the law. In Switzerland there are no subjects nor any privileges of rank, birth, person or family.

Article 60.—Every Canton is bound to accord to citizens of the other Confederated States the same treatment as to its own citizens in regard to legislation and judicial proceedings.

WEIMAR GERMANY

Article 109.—All Germans are equal before the law.

Men and women have fundamentally the same civic rights and duties.

Public legal privileges or disadvantages of birth or rank shall be abolished. Titles of nobility shall be simply a part of the name, and may no longer be conferred.

Titles may be conferred only when they indicate an office or calling; academic degrees are not hereby affected.

Orders and badges of honour may not be conferred by the State.

No German is permitted to accept a title or order from a foreign Government.

Article 110.—Para 2.—Every German has the same rights and duties in any State of the Reich as the subjects of that State.

Article 119.— Para 1.—Marriage, as the foundation of family life and of the preservation and growth of the nation, is under the special protection of the Constitution. It rests upon the equal rights of both sexes.

Article 128.—Para 2.—All exceptional provisions against women official are annulled.

Article 136.—Civil and political rights and duties are neither dependent upon nor restricted by the practice of religious freedom.

3. The enjoyment of civil and political rights, as well as admission to official posts, are independent of religious creed.

CZECHOSLOVAKIA

Article 103.—1. Privileges of sex, birth or occupation shall not be recognised.

2. All persons residing in the Czechoslovak Republic shall enjoy within its territory, in equal measure with the nationals of the Republic, full and absolute protection of life and liberty without distinction of origin, nationality, language, race or religion. Exception to this principle may be made only in cases recognised by international law.

3. Titles may be conferred only when they indicate office or occupation. This provision shall not apply to academic distinctions.

****Article 128.**—1. All citizens of the Czechoslovak Republic shall be in all respects equal before the law and shall enjoy the same civil and political rights without distinction of race, language or religion.

2. Differences of religion, creed, faith or language shall not prejudice any citizen of the Czechoslovak Republic in any way, within the limits laid down by general laws, particularly in regard to public employment, office or honours and to the exercise of any trade or calling.

4. The foregoing provisions shall be, without prejudice to the rights of State authorities in such matters in virtue of laws at present in force or hereafter promulgated, for the purpose of ensuring public order, the safety of the State, or effective supervision by the State.

JUGOSLAVIA

Article 4.—There shall be but one nationality in the Kingdom. All citizens shall be equal before the law. Nobility, titles or other privileges of birth shall not be recognised.

DANZIG

Article 73.—All nationals of the Free City shall be equal before the law. Exceptional laws shall be inadmissible.

Men and women shall have the same rights and duties.

There shall be no legal privileges or disqualifications due to birth, position or creed.

Titles—with the exception of Academic degrees—shall not be awarded except when they denote an office or a profession.

Orders and decorations may not be awarded by the Free City.

No national of Danzig may accept titles or orders.

Titles of nobility shall be regarded only as part of a name and shall no longer be conferred.

Article 80.—Marriage, as the foundation of family life, shall be placed under the special protection of the State. It shall rest upon the equality of rights of both sexes.

Article 91.—All nationals of either sex shall be eligible for public appointments, with due regard to their qualifications and previous service.

Article 96.—There shall be complete freedom of creed and conscience. The undisturbed practice of religion shall be assured, and shall be placed under the protection of the State. Enjoyment of civil and political rights and admission to public offices shall be independent of religious creed.

U.S.S.R.

Article 122.—Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, state, cultural, social and political life.

The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, pre-maternity and maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.

Article 123.—Equality of rights of citizens of the U.S.S.R., irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life, is an indefeasible law.

Any direct or indirect restriction of the rights of, or, conversely, any establishment of direct or indirect privileges for, citizens on account of their race or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

*Article 135.—Elections of deputies are universal: all citizens of the U.S.S.R. who have reached the age of eighteen, irrespective of race or nationality, religion, educational, and residential qualifications, social origin, property, status or past activities, have the right to vote in the election of deputies and to be elected, with the exception of insane persons and persons who have been convicted by a court of law and whose sentences include deprivation of electoral rights.

*Article 137.—Women have the right to elect and be elected on equal terms with men.

IRELAND

*Section 9 (1) 3°—No person may be excluded from Irish nationality and citizenship by reason of the sex of such person.

Section 40 (1) .—All Citizens shall, as human persons, be held equal before the law.

This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function.

(2) 1°. Titles of nobility shall not be conferred by the State.

2°. No title of nobility or of honour may be accepted by any citizen except with the prior approval of the Government.

CHINA

*Article 5.—All the peoples of the Republic of China shall be equal.

Article 7.—The people of the Republic of China, irrespective of sex, religion, race, class and party, shall be equal before the law.

AUSTRALIA

Section 117.—A Subject of the Queen, resident in any State, shall not be subject in any other State to any disability or discrimination which would not be equally applicable to him if he were a subject of the Queen resident in such other State.

INDIA

Section 275.—*Persons not to be disqualified by sex for holding certain offices.*—A person shall not be disqualified by sex for being appointed to any civil service of, or civil post under, the Crown in India other than such a service or post as may be specified by any general or special order made—

(*a*) by the Governor-General in the case of services and posts in connection with the affairs of the Federation.

(*b*) by the Governor of a Province in the case of services and posts in connection with the affairs of the Province ;

(*c*) by the Secretary of State in relation to appointments made by him ;

Provided that any such agreement with respect to joint services and posts as is mentioned in chapter II of this Part of this Act may provide for the powers conferred by this section on the Governor General and the Governor of a Province being exercised with respect to the services or posts to which the agreement applies, by the Governor General or a specified Governor.

Section 298.—*Persons not to be subjected to disability by reason of race, religion & c.*

(1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India, or be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business, or profession in British India.

(2) Nothing in this section shall affect the operation of any law which—

(*a*) prohibits, either absolutely or subject to exceptions, dispositions of agricultural land situate in any particular area and owned by a person belonging to some class recognised by the law as being a class of persons engaged in favour or for the benefit of any person not belonging to that class.

(*b*) recognises the existence of some right, privilege or disability attaching, to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

(4) In paragraph (a) of sub-section (2) of this section, 'agricultural land', in relation to any area where there is in force immediately before the commencement of Part III of this Act any law the operation of which is to any extent saved by the said paragraph (*a*), includes all such property and rights in or over property as are included in the expression 'land' as defined for the purposes of that law as then in force.

CHAPTER VI

ECONOMIC RIGHTS

U.S.A.

(1791).

Article V.—No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

(1865).

Article XIII, Section 1.—Neither slavery nor involuntary servitud except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2.—The Congress shall have power to enforce this article by appropriate legislation.

(1868).

Article XIV, Section 1.—All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

SWITZERLAND

Article 31.—The freedom of trade and industry is guaranteed throughout the Confederation.

Are reserved:

(*a*) The salt and gunpowder monopolies, the federal duties, the import duties of wines and other alcoholic beverages, as well as the consumption duties expressly recognized by the Confederation under article 32;

(*b*) The manufacture, import, rectification, sale and taxation of distilled liquors, in conformity with articles 32 (a) and 32 (c);

(*c*) Everything that concerns taverns and the trade in alcoholic beverages, in conformity with article 32 (d);

(*d*) The sanitary police measures concerning contagious diseases, very common diseases and diseases particularly dangerous for the human and animal races;

(*e*) Provisions concerning the exercise of commercial and industrial professions, the relevant taxes and the regulation of highways. These provisions shall contain nothing contrary to the principle of the freedom of trade and industry.

Article 34 (a)—The Confederation will introduce legislation to provide for sickness and accident insurance regard being had to existing institutions.

Such insurance may be made compulsory on all or on specified categories of citizens.

Article 34 (c)—The Confederation shall introduce by legislative means old age and survival insurance institutions ; it may later introduce invalidity insurance institutions.

It may declare these institutions compulsory on all or on certain classes of citizens.

These insurance institutions shall be realized with the co-operation of the cantons ; public and private insurance funds may be called upon to co-operate.

The first two insurance branches shall be simultaneously introduced.

The financial contributions of the Confederation and of the cantons shall not in all exceed half the sums necessary for the insurance.

From January 1st, 1926, the Confederation shall earmark for its old age and survival insurance institutions the total product of the tobacco tax.

The share of the Confederation in the net receipts of the tax on spirits shall be earmarked for the old age and survival insurance institutions.

Article 48—A Federal law shall make provision as to the expenses of the illness and burial of poor citizens of one Canton who fall ill or die in another Canton.

WEIMAR GERMANY

Article 122.—Young persons shall be protected against exploitation as well as against moral, spiritual, or bodily neglect. Both the State and the local authorities must undertake the necessary arrangements.

Protective measures of a compulsory character may only be imposed by virtue of a law.

***Article 138.**—Para 2.—The property and other rights of religious bodies and unions in respect of their institutions, foundations and other property devoted to public worship, education and social welfare, are guaranteed.

Article 151.—The organization of economic life must correspond to the principles of justice, and be designed to ensure for all a life worthy of a human being. Within these limits the economic freedom of the individual must be guaranteed.

Legal compulsion is permissible only in order to enforce rights which are threatened, or to subserve the pre-eminent claims of the common weal.

Freedom of trade and industry is guaranteed in accordance with the provisions of laws of the Reich.

Article 152.—Freedom of contract shall prevail in economic relations, subject to the provisions of the laws.

Usury is forbidden. Contracts which are opposed to morality are void.

Article 153.—Property is guaranteed by the Constitution. Its extent and the restrictions placed upon it are defined by law.

Expropriation may be effected only for the benefit of the general community and upon the basis of law. It shall be accompanied by due compensation, save in so far as may be otherwise provided by a law of the Reich. In case of dispute as to the amount of compensation, resort may be had to legal proceedings in the ordinary course, unless a law of the Reich otherwise determines. Property of the States, local authorities and public utility associations may be expropriated by the Reich only on payment of compensation.

The ownership of property entails obligations. Its use must at the same time serve the common good.

Article 154.—The right of inheritance is guaranteed in accordance with the provisions of the Civil Law.

The share in any inheritance which accrues to the State is determined by law.

Article 155.—The distribution and use of land shall be supervised by the State in such a way as to prevent abuse and with a view to ensuring to every German a healthy dwelling and to all German families, particularly those with many children, a dwelling and economic homestead suited to their needs. Special consideration shall be given in the framing of the Homestead Laws to persons who have taken part in the war.

Landed property may be expropriated when required to meet the needs of housing, or for the purpose of land settlement, the bringing of land into cultivation or the improvement of husbandry. Testamentary trusts are to be terminated.

The cultivation and full utilization of the land is a duty the land owner owes to the community. Increment in the value of landed property, not accruing from any expenditure of labour and capital upon the land, shall be devoted to the uses of the community.

All riches in the soil and all natural sources of power of economic value shall be under the control of the State. Private royalties shall be transferred to the State by legislation.

Article 156.—The Reich may, by legislation, without prejudice to the payment of compensation and subject to appropriate application of the provisions governing expropriation, transfer to public ownership private economic undertakings which are suitable for socialization. It may itself undertake, or assign to the States or local authorities a share in the management of such undertakings and associations, or otherwise ensure to itself a determining influence therein.

Further, the Reich may, by legislation, in case of pressing necessity and in the economic interests of the community, oblige economic undertakings and associations to combine, on a self-governing basis, for the purpose of ensuring the co-operation of all productive factors of the nation, associating employers and employees in the management, and regulating the production, manufacture, distribution, consumption, prices and the import and export of commodities upon principles determined by the economic interest of the community.

Industrial and agricultural co-operative societies and federations thereof may be incorporated into the public economic system, at their own request and with due regard to their constitution and special characteristics.

Article 157.—Labour is under the special protection of the Reich.

The Reich will frame a uniform labour code.

Article 158.—Intellectual work, the rights of discoverers, inventors and artists are under the protection and care of the Reich.

By means of international agreements, recognition and protection must be ensured abroad for the products of German science, art, and technical skill.

Article 159.—Freedom of association for the maintenance and improvement of labour and economic conditions is guaranteed to every one and for all occupations. All agreements and measures tending to restrict or obstruct such freedom are illegal.

Article 160.—Every person in the position of an employee or workman has a right to such free time as is necessary for the exercise of his civic rights, and, in so far as the business in which he is employed will not be seriously injured thereby, for the discharge of honorary public duties entrusted to him.

Legislation shall determine how far such a person may be entitled to claim compensation.

Article 161.—The Reich will, with the full co-operation of insured persons, create a comprehensive system of insurance for the maintenance of health and fitness for work, the protection of motherhood and provision for the economic consequences of old age, infirmity, and the vicissitudes of life.

Article 162.—The Reich will initiate international regulation of the legal conditions of workers, with a view to securing for the working class of the world a universal minimum of social rights.

Article 163.—It is the moral duty of every German, without prejudice to his personal liberty, to make such use of his mental and bodily powers as shall be necessary for the welfare of the community.

Every German must be afforded an opportunity to gain his livelihood by economic labour. Where no suitable opportunity of work can be found for him, provision shall be made for his support. Details shall be determined by special laws of the Reich.

Article 164.—The independent middle class in agriculture, industry and commerce, shall be encouraged by legislative and administrative measures, and shall be protected against exploitation and oppression.

Article 165.—Workers and salaried employees are called upon to co-operate with equal rights in common with the employers in the regulation of wages and conditions of labour and in the general economic development of the forces of production. The organisations on both sides and the agreements made by them shall be recognised.

For the protection of their social and economic interests, workers and salaried employees shall have legal representation in Workers' Councils for individual undertakings and in District Workers' Councils grouped according to economic districts and in a Workers' Council of the Reich.

The District Workers' Council and the Workers' Council of the Reich shall combine with representatives of the employers and other classes of the population concerned so as to form District Economic Councils and an Economic Council of the Reich, for the discharge of their joint economic functions and for co-operation in the carrying out of laws relating to socialization. The

District Economic Councils and the Economic Council of the Reich shall be so constituted as to give representation thereon to all important vocational groups in proportion to their economic and social importance.

All Bills of fundamental importance dealing with matters of social and economic legislation shall, before being introduced, be submitted by the Government of Reich to the Economic Council of the Reich for its opinion thereon. The Economic Council of the Reich shall have the right itself to propose such legislation. Should the Government of the Reich not agree with any such proposal, it must nevertheless introduce it in the Reichstag, accompanied by a statement of its own views thereon. The Economic Council of the Reich may arrange for one of its own members to advocate the proposal in the Reichstag.

Powers of control and administration in any matters falling within their province may be conferred upon Workers' Councils and Economic Councils.

The constitution and functions of the Workers' and Economic Councils and their relations with other autonomous social organizations are within the exclusive jurisdiction of the Reich.

CZECHOSLOVAKIA

Article 107.—2. Deprivation of, or limitations upon, personal liberty shall not be permitted save in accordance with law. Public authorities may not require personal service from any citizen save in cases provided for by law.

Article 109.—1. Private property may be restricted only by law.

JUGOSLAVIA

****Article 22.**—1. It shall be the duty of the State to ensure that all citizens shall have an equal opportunity of preparing themselves for such economic work as they have a preference for. To this end, the State shall organize technical instruction and continued assistance for the education of poor, gifted children.

****Article 23.**—Labour shall be under the protection of the State.

Special protection shall be extended to women and young persons engaged in occupations injurious to health.

The law shall prescribe special measures for the security and protection of the workers, and shall regulate the length of the working day in all undertakings.

****Article 24.**—The products of intellectual industry shall be the property of the producer, for which he shall enjoy the protection of the State.

****Article 25.**—Freedom of contract in economic affairs shall be recognised in so far as it is not opposed to the public interest.

****Article 26.**—It shall be the right and duty of the State, acting in the interests of the community and upon the basis of the law, to intervene in economic relations between citizens in a spirit of justice and with a view to averting social conflict.

****Article 27.**—It shall be the concern of the State—

(1) to ameliorate the general hygienic and social conditions affecting the health of the nation;

(2) to give special protection to mothers and young children ;

(3) to take measures for the preservation of the health of all citizens ;

(4) to combat contagious, acute and chronic diseases and the abuse of alcohol ;

(5) to arrange for furnishing to poor citizens free medical assistance and medical remedies, and other means of preserving the health of the nation.

**Article 29.—The State shall give material assistance to national co-operative organizations and other national economic associations not working for profit. Other things being equal, a preference shall be given in matters with which they deal to co-operative and other similiar economic associations, or federations thereof, as against private enterprises.

Co-operative societies shall be the subject of legislation to be passed and made applicable throughout the country.

**Article 30.—Agricultural insurance shall be regulated by special legislation.

**Article 31.—Workmen's insurance against accident, sickness, unemployment, disablement from work, old age and death shall be regulated by special legislation.

**Article 32.—Persons disabled in war, and war widows and orphans, together with relatives of soldiers who died or were killed during the war if they are poor and incapable of work, shall be accorded special protection and help by the State as evidence of its gratitude.

The special industrial training of disabled men and the education of war orphans in preparation for life and work shall be regulated by legislation.

**Article 33.—The right of workers to organize for the improvement of the conditions of labour shall be guaranteed.

**Article 34.—Special attention shall be given to sea fisheries and maritime affairs.

Insurance of persons in maritime occupations against sickness, disablement, old age, and death shall be dealt with by special legislation.

**Article 35.—It shall be the business of the State to establish and maintain means of communication of all kinds wherever required in the public interest.

**Article 36.—Usury in every form is prohibited.

**Article 37.—Private property shall be guaranteed. The obligation imposed by the private ownership of property shall be recognised. The use of property must not be injurious to the interests of the community. The scope, extent and limits of private ownership shall be regulated by law.

Expropriation for reasons of public utility shall be permissible upon conditions determined by law and in return for fair compensation.

**Article 38.—Testamentary trusts are abolished.

Endowments for purposes of general utility shall be recognised.

Legislation shall determine in what cases the destination and purpose of an endowment may be altered on account of changed circumstances.

**Article 39.—Legislation upon succession duties shall ensure participation by the State in the inheritance of property, account being taken of the degree of relationship between the heir and the person from whom he inherits and of the value of the property passing.

**Article 40.—Means of transport and other articles may be requisitioned to supply the needs of the army only on payment of fair compensation.

**Article 41.—Large forested estates in private ownership shall be expropriated by law and become the propetry of the State or of local governing bodies. The extent to which large forested estates may become the property of other public bodies now existing or to be established shall be determined by law.

Areas which would normally be forested, and the re-afforestation of which is required for reasons of climate or cultivation, shall likewise become the property of the State or local governing bodies, in accordance with the law upon expropriation, so far as re-afforestation cannot be otherwise effected.

Large forested estates which had been granted to certain persons by foreign authorities shall become, in accordance with the law, the property of the State or of the commune without payment of compensation. Forestry legislation shall prescribe the conditions upon which cultivators and workers for whom agriculture is a supplementary occupation may cut timber for buildings and fuel and pasture their live-stock in forests owned by the State or local governing bodies.

**Article 42.—Feudal rights shall be deemed to have been abolished in the eyes of the law as from the date of the freeing of the country from foreign domination. If, before that date, injustices have been committed in the process of suppressing feudal rights or transforming them into rights under the civil law, such injustices shall be remedied by law.

The Kmetes (Tehivtchis†) and cultivators who work their lands upon the same conditions as the Kmetes shall be confirmed in their possession as free owners of the lands they occupy; they shall pay no indemnity in respect of such ownership and shall be entered on the register of landed property.

**Article 43.—The expropriation of large landed estates and the division of them among those working the land shall be regulated by law. The nature of the compensation to be paid in respect of expropriated estates shall also be determined by law. No compensation shall be paid in respect of large estates which were owned by members of former foreign dynasties or which were granted to individuals by foreign usurping authority.

In the colonizing of such estates preference shall be given to freely organized co-operative colonizing societies ; measures shall be taken to ensure that the colonies are provided with the necessary means for successful production.

In the colonization and division of expropriated lands preference shall e given to soldiers in need who fought for the liberation of the Serbs, Croats, nd Slovenes and to their families.

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† Kmetes are tenants paying "tithes" to a landlord, who can deprive them of their lands (Note by Professor P. Popwich, of University of Belgrade).

The maximum extent of landed property and the cases in which a minimum holding of land may not be alienated shall be determined by law.

**Article 44.—An Economic Council shall be established for the purpose of elaborating social, and economic legislation. Detailed provisions as to the composition and powers of the Council shall be prescribed by law.

DANZIG

Article 83.—Young persons shall be protected against exploitation as well as against moral, spiritual and physical neglect. Compulsory measures to ensure their welfare may only be adopted if sanctioned by the law.

Article 110.—The rights of property shall be secured. Expropriation may only be effected in accordance with the provisions of the law and for the benefit of the whole community, and in return for due compensation; in case of dispute with regard to the amount of compensation recourse may be had to the law-courts.

Article 111.—The soil and its natural resources will be the subject of special legislation which shall prevent all misuse, and which shall enable every family of the Free City to obtain a permanent abode suitable for residence (homestead) or, in the case of those who have received vocational training, a place in which they can live and work permanently. Large families, those disabled by the War, and those physically affected as the result of their employment, shall be given special consideration in the housing legislation which is to be passed.

The unearned increment, which accrues from the land without any expenditure of labour or capital, shall be used for the benefit of the community.

Article 112.—Transfer of private commercial undertakings to public ownership, in as far as it is required in the public interest, may be effected by special legislation in return for compensation.

Article 113.—Freedom of association with the object of guaranteeing and improving conditions of labour and economic conditions shall be secured to all individuals and to all vocations. Any agreements and measures tending to restrict or obstruct such freedom are illegal.

Article 114.—The State shall draw up a comprehensive Scheme of Insurance in the drafting of which the insured persons shall have a determining voice for the maintenance of health and working efficiency, the protection of motherhood and as a provision against the economic consequences of old age, infirmity and the vicissitudes of life, including unemployment.

Article 115.—Workers and employees may respectively organise separate Works Committees (Betriebsausschusse) elected from amongst themselves. These shall co-operate with the employers on a basis of equality in the regulation of questions concerning wages and labour conditions. Further details will be determined by law.

The organisations set up by either side and their mutual agreements shall be recognised.

In order to secure the social and economic interests of workers and employees and to promote the general economic development of productive forces, a Labour Office shall be established in accordance with the second paragraph of Article 46.

U.S.S.R.

**Article 4.—The socialist system of economy and the socialist ownership of the means and instruments of production firmly established as a result of the abolition of the capitalist system of economy, the abrogation of private ownership of the means and instruments of production and the abolition of the exploitation of man by man, constitute the economic foundation of the U.S.S.R.

**Article 5.—Socialist property in the U.S.S.R. exists either in the form of state property (the possession of the whole people), or in the form of co-operative and collective-farm property (property of a collective farm or property of a co-operative association).

**Article 6.—The land, its natural deposits, waters, forests, mills, factories, mines, rail, water and air transport, bank, post, telegraph, and telephones, large state-organized agricultural enterprises (state farms, machine and tractor stations and the like) as well as municipal enterprises and the bulk of the dwelling houses in the cities and industrial localities, are state property, that is, belong to the whole people.

**Article 7.—Public enterprises in collective farms and co-operative organizations, with their livestock and implements, the products of the collective farms and co-operative organizations, as well as their common buildings' constitute the common, socialist property of the collective farms and co-operative organizations.

In addition to its basic income from the public, collective-farm enterprise, every household in a collective farm has for its personal use a small plot of land attached to the dwelling and, as its personal property, a subsidiary establishment on the plot, a dwelling house, livestock, poultry and minor agricultural implements in accordance with the statutes of the agricultural artel.

**Article 8.—The land occupied by collective farms is secured to them for their use free of charge and for an unlimited time, that is, in perpetuity.

**Article 9.—Alongside the socialist system of economy, which is the predominant form of economy in the U.S.S.R., the law permits the small private economy of individual peasants and handicraftsmen based on their personal labour and precluding the exploitation of the labour of others.

**Article 10.—The right of citizens to personal ownership of their incomes from work and of their savings, of their dwelling houses and subsidiar household economy, their household furniture and utensils and articles of personal use and convenience, as well as the right of inheritance of personal property of citizens, is protected by law.

**Article 11.—The economic life of the U.S.S.R. is determined and directed by the State national economic plan with the aim of increasing the public wealth, of steadily improving the material conditions of the working people and raising their cultural level, of consolidating the independence of the U.S.S.R. and strengthening its defensive capacity.

**Article 12.—In the U. S. S. R. work is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle : " He, who does not work, neither shall he eat."

The principle applied in the U.S.S.R. is that of socialism : " From each according to his ability, to each according to his work. "

Article 118.—Citizens of the U.S.S.R. have the right to work, that is, are guaranteed the right to employment and payment for their work in accordance with its quantity and quality.

The right to work is ensured by the socialist organisation of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment.

Article 119.—Citizens of the U.S.S.R. have the right to rest and leisure.

The right to rest and leisure is ensured by the reduction of the working day to seven hours for the overwhelming majority of the workers, the institution of annual vacations with full pay for workers and employees and the provision of a wide network of sanatoria, rest homes and clubs for the accommodation of the working people.

Article 120.—Citizens of the U.S.S.R. have the right to maintenance in old age and also in case of sickness or loss of capacity to work.

This right is ensured by the extensive development of social insurance of workers and employees at state expense, free medical service for the working people and the provision of a wide network of health resort for the use of the working people.

Article 122.—Women in the U.S.S.R. are accorded equal rights with men in all spheres of economic, state, cultural, social and political life.

The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interest of mother and child, pre-maternity and maternity leave with full pay, and the provision of a wide newtwork of maternity homes, nurseries and kindergartens.

IRELAND

Section 40. (3) 20.—The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name and property rights of every citizen.

Section 41. (2)1°.—In particular, the State recognises that by her life within the home, women gives to the State a support without which the common good cannot be achieved.

2°—The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

Section 43 (1) 1°.—The State acknowledges that man, in virtue of his rational being, has the natural right, antecedent to positive law, to the private ownership of external goods.

2°—The State accordingly guarantees to pass no law attempting to abolish the right of private ownership or the general right to transfer, bequeath and inherit property.

(2) 1°—The State recognises, however, that the exercise of the rights mentioned in the foregoing provisions of this article ought, in civil society, to be regulated by the principles of social justice.

2°—The State, accordingly, may as occasion requires delimit by law the exercise of the said rights with a view to reconciling their exercise with the exigencies of the common good.

****Section 45.**—The principles of social policy set forth in this article are intended for the general guidance of the Oireachtas. The application of those principles in the making of laws shall be the care of the Oireachtas exclusively, and shall not be cognisable by any court under any of the provisions of this constitution.

(1) The State shall strive to promote the welfare of the whole people by securing and protecting as effectively as it may a social order in which justice and charity shall inform all the institutions of the national life.

(2) The State shall, in particular, direct its policy towards securing—

(i) that the citizens (all of whom, men and women equally, have the right to an adequate means of livelihood) may through their occupations find the means of making reasonable provision for their domestic needs ;

(ii) that the ownership and control of the material resources of the community may be so distributed amongst private individuals and the various classes as best to subserve the common good;

(iii) that, especially, the operation of free competition shall not be allowed so to develop as to result in the concentration of the ownership or control of essential commodities in a few individuals to the common detriment ;

(iv) that in what pertains to the control of credit the constant and predominant aim shall be the welfare of the people as a whole ;

(v) that there may be established on the land in economic security as many families as in the circumstances shall be practicable.

(3) 1°—The State shall favour and, where necessary, supplement private initiative in industry and commerce.

2°—The State shall endeavour to secure that private enterprise shall be so conducted as to ensure reasonable efficiency in the production and distribution of goods and as to protect the public against unjust exploitation.

(4) 1°—The State pledges itself to safeguard with special care the economic interests of the weaker sections of the community, and, where necessary, to contribute to the support of the infirm, the widow, the orphan, and the aged.

2°—The State shall endeavour to ensure that the strength and health of workers, men and women, and the tender age of children shall not be abused and that citizens shall not be forced by economic necessity to enter vocations unsuited to their sex, age or strength.

CHINA

Article 15.—The right to exist, the right to work and the right to property of the people shall be protected.

****Article 142.**—The national economy, based on the Principle of People's Livelihood shall carry out equalization of land ownership and restriction of capital in order to seek to attain equal sufficiency in national life and the people's livelihood.

****Article 143.**—All land within the territory of the Republic of China belongs to the people of the country as a whole. The right of possession of land acquired by the people in accordance with law shall be protected and restricted by law. Private-owned land shall be liable to taxation *ad valorem* and the Government may buy the land *ad valorem*.

Mines fixed to the land and natural power which may be utilized for public benefit economically shall belong to the State. They shall not be affected otherwise because of the people having acquired the right of possession of the land.

If the value of the land is increased not through the exertion of labour and employment of capital, the State shall levy a land increment tax, the proceeds of which shall be enjoyed by the people in common.

The State, in the distribution and adjustment of land, shall act on the principle of helping landowning tillers and those who make use of the land by themselves, and shall also regulate appropriate sizes of areas for cultivation.

****Article 144.**—Public utilities and other enterprises of monopolistic nature shall be publicly operated as a principle, but if permitted by law, they may be operated privately by the citizens.

****Article 145.**—The State, with respect to private wealth and private operated enterprises, shall restrict them by law if they are deemed detrimenta to the balanced development of national economic life and the people's livelihood.

Co-operative enterprises shall be encouraged and assisted by the State.

The people's production enterprises and foreign trade shall be encouraged, guided and protected by the State.

****Article 146.**—The State shall, through the employment of scientific technique, develop river conservancy, increase the productivity of the land, improve agricultural environment, plan for the utilization of land, and develop agricultural resources in order to bring about industrialization of agriculture.

****Article 147.**—The Central Government, in order to seek a balanced economic development among the provinces, shall give appropriate aid to poor and unproductive provinces. The province, in order to seek a balanced economic development among the Hsien, shall give appropriate aid to poor and unproductive Hsien.

****Article 148.**—Within the boundaries of the Republic of China all goods shall be permitted to move freely.

**Article 149.—Financial organisation shall be subject to State Control in accordance with law.

**Article 150.—The State shall establish extensive financial organizations to relieve unemployment.

**Article 151.—The State, with respect to Chinese nationals residing abroad, shall assist and protect the development of their economic enterprises.

**Article 152.—The State shall provide opportunity for suitable work to all people who have ability to work.

**Article 153.—The State, in order to improve the livelihood of labourers and farmers and to enpace their productive technical skill, shall enact laws for the protection of labourers and farmers, and shall enforce the policy of protection of labourers and farmers.

Women and children engaged in work of labour shall be given special protection according to their age and physical condition.

**Article 154.—Capital and Labour shall, in accordance with the principles of harmony and co-operation, develop productive enterprises. Conciliation and arbitration of disputes between Capital and Labour shall be regulated by law.

**Article 155.—The State, in order to promote social welfare, shall enforce the social insurance system. To the aged, weak and the crippled among the people who are unable to earn a living and to victims of unusual calamities, the State shall give appropriate assistance and relief.

**Article 156.—The State, in order to strengthen the foundation of national existence and development, shall protect Motherhood and enforce the policy of promoting the welfare of women and children.

**Article 157.—The State, in order to improve national health, shall establish extensive sanitation and health protection enterprises and a system of public medical service.

**Article 168.—The State shall accord legal protection to the status of the various peoples in the frontier regions, and shall give special assistance to their local self-government work.

**Article 169.—The State shall positively undertake and assist the development of educational, cultural, communications, water conservancy, health and other economic and social enterprises of the various peoples in the frontier regions. With respect to the utilization of land, the States shall, according to the climate and the nature of the soil and in the light of what is deemed suitable to the life and habits of the people, give the land protection and help its development.

CANADA

Section 121.—All articles of the growth, produce or manufacture of any one of the Provinces shall, from and after the union, be admitted free into each of the other Provinces.

AUSTRALIA

*Section 92.—On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free.

But notwithstanding anything in this constitution, goods imported before the imposition of uniform duties of customs into any State, or into any Colony which, whilst the goods remain therein, becomes a State, shall, on thence passing into another State within 2 years after the imposition of such duties, be liable to any duty chargeable on the importation of such goods into the Commonwealth, less any duty paid in respect of the goods on their importation.

SOUTH AFRICA

Section 136.—There shall be free trade throughout the Union, but until Parliament otherwise provides the duties of custom and of excise leviable under the laws existing in any of the Colonies at the establishment of the Union shall remain in force.

INDIA

Section 297.—*Prohibition of certain restrictions on Internal Trade.*—(1) No Provincial Legislature or Government shall—

(*a*) by virtue of the entry in the Provincial Legislative List relating to trade and commerce within the Province, or the entry in that list relating to the production, supply, and distribution of commodities, have power to pass any law or take any executive action prohibiting or restricting the entry into, or export from, the Province of goods of any class or description ; or

(*b*) by virute of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province, discriminates between goods manufactured or produced in one locality and similar goods manufactured or produced in another locality.

(2) Any law passed in contravention of this section shall, to the extent of the contravention, be invalid.

Section 299.—*Compulsory Acquisition of Land, &c*—(1) No person shall be deprived of his property in British India save by authority of law.

(2) Neither the Federal nor a Provincial Legislature shall have power to make any law authorising the compulsory acquisition for public purposes of any land, or any commercial or industrial undertaking or any interest in, or in any Company owning, any commercial or industrial undertaking, unless the law provides for the payment of compensation for the property acquired and either fixes the amount of the compensation, or specifies the principles on which, and the manner in which, it is to be determined.

(3) No Bill or amendment making provision for the transference to public ownership of any land or for the extinguishment or modification of rights therein, including rights or privileges in respect of land revenue, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(4) Nothing in this section shall affect the provisions of any law in force at the date of the passing of this Act.

(5) In this section " Land " includes immovable property of every kind and any rights in or over such property, and " undertaking " includes part of an undertaking.

Section 300—*Protection for certain rights, privileges and pensions.*—(1) The executive authority of the Federation or of a Province shall not be exercised, save on an order of the Governor-General or Governor, as the case may be, in the exercise of his individual judgment, so as to derogate from any grant or confirmation of title of or to land, or of or to any right or privilege in respect of land or land revenue, being a grant or confirmation made before the first day of January one thousand eight hundred and seventy, or made on or after that date for services rendered.

(2) No pension granted or customarily payable before the commencement of Part III of this Act by the Governor-General in Council or any Local Government on political considerations or compassionate grounds shall be discontinued or reduced, otherwise than in accordance with any grant or order regulating the payment thereof, save on an order of the Governor-General in the exercise of his individual judgment, or, as the case may be, of the Governor in the exercise of his individual judgment, and any sum required for the payment of any such pension shall be charged on the revenues of the Federation, or as the case may be, the Province.

(3) Nothing in this section affects any remedy for a breach of any condition on which a grant was made.

AUSTRIA (1934)

Section 32.—(1) Every Federal citizen is entitled to free choice of occupation.

ESTONIA (1937)

Section 18, para 3.—Freedom to strike is guaranteed in Esthonia.

GREECE (1927)

Section 20.—The tenour or the clauses of a will or a donation shall not be modified in any respect in such a manner as to affect provisions in favour of the State or any public interest.

By way of exception, if it becomes absolutely impossible to carry out the wishes of the donor or testator, the donation or bequest may be allocated by law to another similar purpose.

CHAPTER VII

POLITICAL RIGHTS

U.S.A.

(1791).

Article 1.—The Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the Government for a redress of grievances.

(1870).

Article XV: Section 1.—The right of the citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour, or previous condition of servitude.

Section 2.—The Congress shall have power to enforce this article by appropriate legislation.

(1919).

Article XIX.—(1) The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

(2) The Congress shall have power to enforce the provisions of this Article by appropriate legislation.

SWITZERLAND

Article 12.—The members of the federal authorities, federal, civil and military officials, representatives and commissioners as well as the members of the Cantonal Governments and legislatures may accept from a foreign government neither pensions or salaries, nor titles, gifts or decorations. The violation of this prohibition entails the loss of the mandate or of the office.

He who is in possession of such a pension, title or decoration, cannot, by election or appointment, become a member of the federal authority nor a civil or military official of the Confederation, nor a federal representative or commissioner, nor a member of the government or legislature of a Canton, unless he shall have expressly renounced his right to the pension or the title or returned the decoration, before exercising his mandate or entering upon his office.

The wearing of foreign decorations or the use of titles conferred by foreign government are forbidden in the Swiss army.

All officers, non-commissioned officers or soldiers are forbidden from accepting any such distinction.

Article 57.—The right to petition is guaranteed.

WEIMAR GERMANY

Article 112.—2. All nationals of the Reich within and beyond its territory are entitled to claim the protection of the Reich in relation to a foreign power.

3. No German may be handed over to a foreign Government for prosecution or punishment.

Article 113.—Sections of the population of the Reich speaking a foreign language may not be restricted, whether by way of legislation or administration, in their free racial development; this applies, specially to the use of their mother tongue in education, as well as in questions of internal administration and the administration of justice.

Article 125.—The freedom and the secrecy of elections are guaranteed. Details are to be determined by electoral laws.

Article 126.—Every German has the right to address written petitions or complaints to the competent authorities or the representatives of the people. This right may be exercised by individuals, and by several persons in common.

Article 127.—Communes and associations of Communes have the right to administer their own affairs within the limits of the laws.

Article 128.—All citizens of the State, without distinction, are eligible for public offices as provided by law and in accordance with their qualifications and abilities.

All exceptional provisions against women officials are annulled.

The conditions of employment of officials shall be determined by law of the Reich.

Article 129.—Officials are appointed for life, save as may be otherwise provided by law. Pensions and provision for surviving dependants shall be regulated by law. Rights duly acquired by officials are inviolable. Official may have recourse to legal proceedings in respect of financial claims.

Officials may not be provisionally removed from office, or provisionally or permanently retired, or transferred to another post with a lower salary, save in accordance with and in the manner determined by law.

Every penalty inflicted on an official must be subject to appeal and the possibility of revision. Unfavourable entries may not be made in the personal record of an official, unless he has been given an opportunity to reply to them. Officials have the right to examine their personal records.

The inviolability of duly acquired rights and opportunity to have recourse to legal proceedings in respect of financial claims are also specially guaranteed by law of the Reich.

Article 130.—Officials are servants of the community and not of any party.

Freedom of political opinions and the free right of association are guaranteed to all officials.

Officials have special Service representation, details in regard to which shall be determined by law of the Reich.

Article 131.—Should an official, in the exercise of the public authority conferred upon him, neglect an official duty incumbent upon him in relation to a third party, the responsibility, as a matter of principle, falls upon the State or the corporate body in whose service the official is acting. Their right to take retributory action is reserved. Recourse to the ordinary process of law must not be excluded.

More detailed regulations shall be prescribed by legislation by the appropriate authority.

Article 136.—Para 1.—Civil and political rights and duties are neither dependent upon nor restricted by the practice of religious freedom.

Article 143.—.....Teachers in public schools have the rights and duties of State officials.

Article 160.—Every person in the position of an employee or workman has a right to such free time as is necessary for the exercise of his civic rights; and, in so far as the business in which he is employed will not be seriously injured thereby, for the discharge of honorary public duties entrusted to him. Legislation shall determine how far such a person may be entitled to claim compensation.

CZECHOSLOVAKIA

Article 111.—1. All imposts and public taxes without exception must be authorised by law.

2. Penalties may not be imposed or threatened save in accordance with law.

****Article 128.**—All citizens of the Czechoslovak Republic shall be in all respects equal before the law and shall enjoy the same civil and political rights, without distinction of race, language or religion.

2. Differences of religion, creed, faith or language shall not prejudice any citizen of the Czechoslovak Republic in any way, within the limits laid down by general laws, particularly in regard to public employment, office on honours and to the exercise of any trade or calling.

3. All citizens of the Czechoslovak Republic may, within the limits laid down by general laws, freely use any language whatsoever, whether in private or business affairs or in matters of religion, in the Press, or in publications of any kind, or in public meetings.

4. The foregoing provisions shall be, without prejudice to the rights of State authorities in such matters in virtue of laws at present in force or hereafter promulgated, for the purpose of ensuring public order, the safety of the State, or effective supervision by the State.

****Article 129.**—The principles upon which the rights of languages in the Czechoslovak Republic shall be based, shall be determined by a special law which shall form part of the Constitutional Charter.

****Article 130.**—Inasmuch as citizens are entitled in accordance with general laws to establish, manage and administer, at their own expense, religious, charitable and social institutions, schools and other educational establishments, all citizens, without distinction of nationality, language, religion or race, shall be on an equality and shall have the right to the free use of their own language and the free exercise of their own religion in such institutions.

****Article 131.**—In towns and districts, where a considerable proportion of Czechoslovak citizens speak a language other than the Czechoslovak language, facilities shall be guaranteed, within the limits laid down by general educational legislation, to enable the children of such citizens to receive instruction in their own tongue. Instruction in the Czechoslovak language may at the same time be made obligatory.

****Article 132.**—In towns and districts where a considerable proportion of Czechoslovak citizens belong to a minority as regards race, religion or language, and where sums of public money are set aside for educational purposes in the State or municipal budgets or otherwise, a due share in the allocation and use of such sums shall be accorded to such minorities, within the limits of the general regulations concerning public administration.

**Article 133.—The application of the principles of Articles 131 and 132, and in particular the definition of the expression "considerable proportion" shall be provided for by special legislation.

**Article 134.—Every manner whatsoever of forcible denationalization shall be forbidden. Violation of this principle may be declared by law to be a criminal offence.

JUGOSLAVIA

Article 15.—All citizens shall have the right to present petitions. Petitions may be signed by one or more individuals, and by legal persons. They may be addressed to all authorities without distinction.

Article 18.—Every citizen against whom an offence has been committed by any official of the State or of a local governing body in the exercise of his functions shall have the right to make complaint to the Court directly and without authorisation from any other person.

Special provision shall be made in respect of Ministers, Judges and soldiers serving with the colours.

The State or the local governing body shall be answerable in the ordinary Courts for damage inflicted upon citizens by irregular exercise of their powers by their agents. The agents shall be held responsible to the State or the local governing body.

Claims for damage shall lapse if not lodged within nine months.

Article 19.—All officers in every branch of official administration shall be equally accessible, upon the conditions prescribed by law, to all citizens by birth or naturalization who are of Serb-Croat-Slovene nationality.

Other naturalized citizens may not enter the service of the State unless they have resided in the Kingdom for ten years provided the earlier entry may be allowed by special sanction of the Council of State upon the application, for stated reasons, of the appropriate Minister.

Article 20.—Every citizen shall enjoy the protection of his State in foreign countries. He shall be free to renounce his nationality after having fulfilled all his obligations to the State.

Extradition of citizens shall be prohibited.

DANZIG

Article 76.—2. Every national whether within or outside the territory of the State, shall have the right to claim the protection of the State in his relations with foreign-countries.

3. No national shall be handed over to a foreign Government for prosecution or punishment

Article 77.—Establishments set up by the State at the public expense in the interests of internal colonisation shall not be used to the prejudice of any particular nationality.

Article 91.—All nationals of either sex shall be eligible for public appointments with due regard to their qualifications and previous service.

Immediately after the coming into force of the Constitution of the Free City, special laws shall be passed with regard to the rights and emoluments of officials. The existing organisations representing the officials shall be called in to assist in the preliminary drafting of these laws.

Article 92.—Officials shall be appointed for life, unless otherwise, provided by the Constitution or by law. Pensions and allowances to widows and surviving dependents shall be regulated by law. Rights duly acquired by officials shall be inviolable. Officials may have recourse to legal process for recovering their financial claims.

Officials cannot be provisionally removed from office, discharged or transferred, whether temporarily or permanently, to the retired list, or to another post with a lower salary, except in accordance with the conditions and formalities established by law. An opportunity for lodging a complaint and for reopening the proceedings shall be given in the case of any penalty inflicted in connection with official duties. No entries of an unfavourable nature shall be made in the personal record of an official until the latter has had an opportunity of furnishing an explanation. Every official shall be allowed to see his own record.

Article 93.—Officials are servants of the community and not of party. They are entitled to freedom of political opinion and freedom of association. They shall not be subjected to any restriction in this respect.

Article 94.—The officials shall have their own representation in accordance with more detailed provisions to be determined by law.

Article 95.—Teachers of both sexes in the public schools are officials directly under the State. This provision does not affect the obligation to maintain the schools.

Article 96.—There shall be complete freedom of creed and conscience. The undisturbed practice of religion shall be assured and shall be placed under the protection of the State. Enjoyment of civil and political rights, and admission to public offices shall be independent of religious creed.

U.S.S.R.

****Article 1.**—The Union of Soviet Socialist Republics is a socialist state of workers and peasants.

****Article 2.**—The Soviets of Working People's Deputies, which grew and attained strength as a result of the overthrow of the landlords and capitalists and the achievement of the dictatorship of the proletariat, constitute the political foundation of the U.S.S.R.

****Article 3.**—In the U.S.S.R. all power belongs to the working people of town and country as represented by the Soviet of Working People's Deputies.

Article 126.—In conformity with the interests of the working people and in order to develop the organizational initiative and political activity of the masses of the people, citizens of the U.S.S.R. are ensured the right to unite in public organizations, trade unions, co-operative associations, youth organizations, sport and defence organizations, cultural, technical and scientific societies; and the most active and politically most conscious citizens in the ranks of the working class and other sections of the working people unite in

the Communist Party of the Soviet Union (Bolsheviks), which is the vanguard of the working people in their struggle to strengthen and develop the socialist system and is the leading core of all organiations of the working people, both public and state.

IRELAND

Section 40 (3)—1°. The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

2°. The State shall, in particular, by its laws protect as best as it may from unjust attack and, in case of injustice done, vindicate the life, person, good name and property rights of every citizen.

CHINA

Article 16.—The people shall have the right to present petitions, lodge complaints and institute legal proceedings.

Article 17.—The people shall exercise the powers of election, recall, initiative and referendum.

Article 18.—The people shall have the right to take part in state examinations and to hold public offices.

Article 24.—Any public functionary, who in violation of law, infringes upon the freedoms or rights of the people, shall, besides being subject to disciplinary punishment in accordance with law, be held responsible under criminal and civil laws. The injured person may, in accordance with law, petition the State for compensation for damages sustained.

****Article 137.**—The national defence of the Republic of China shall aim at safeguarding the security of the State and preserving world peace.

The organization of national defence shall be prescribed by law.

****Article 138.**—The land, sea and air forces of the whole country shall be above and outside of personal, regional or party affiliations, shall be loyal to the State, and shall love and protect the people.

****Article 139.**—No party or individual may utilize armed strength as an instrument in the struggle for political power.

****Article 140.**—No military men in active service may hold concurrently civil offices.

****Article 141.**—The foreign policy of the Republic of China shall, in the spirit of independence and autonomy and on the basis of the principles of equality and reciprocity, cultivate friendly foreign relations and respect treaties and the United Nations Charter in order to protect the rights and interests of overseas Chinese nationals, to promote international co-operation, to advance international justice and to ensure world peace.

****Article 168.**—The State shall accord legal protection to the status of the various peoples in the frontier regions, and shall give special assistance to their local self-government work.

***Article 169.**—The State shall positively undertake and assist the development of educational, cultural, communications, water conservancy, health and other economic and social enterprises of the various peoples in the frontier regions. With respect to the utilization of land, the State shall, according to the climate and the nature of the soil and in the light of what is deemed suitable, to the life and habits of the people give the land protection and help its development.

AUSTRALIA

Section 116.—The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

INDIA

Section 271.—*Protection of public servants against prosecution and suits.*—(1) No Bill or amendment to abolish or restrict the protection afforded to certain servants of the Crown in India by section one hundred and ninety-seven of the Indian code of Criminal Procedure, or by sections eighty to eighty two of the Indian Code of Civil Procedure, shall be introduced or moved in either Chamber of the Federal Legislature without the previous sanction of the Governor-General in his discretion, or in a Chamber of a Provincial Legislature without the previous sanction of the Governor in his discretion.

(2) The powers conferred upon a Local Government by the said section one hundred and ninety-seven with respect to the sanctioning of prosecution and the determination of the court before which, the person by whom and the manner in which, a public servant is to be tried, shall be exercisable only—

(*a*) in the case of a person employed in connection with the affairs of the Federation by the Governor-General exercising his individual judgment; and

(*b*) in the case of a person employed in connection with the affairs of a Province by the Governor of that Province exercising his individual judgment:

Provided that nothing in this sub-section shall be construed as restricting the power of the Federal or a Provincial Legislature to amend the said section by a Bill or amendment introduced or moved with such previous sanction as is mentioned in sub-section (1) of this section.

(3) Where a civil suit is instituted against a public officer, within the meaning of that expression as used in the Indian Code of Civil Procedure, in respect of any act purporting to be done by him in his official capacity, the whole or any part of the costs incurred by him and of any damages or costs ordered to be paid by him shall, if the Governor-General exercising his individual judgment so directs in the case of a person employed in connection with the affairs of the Federation, or if the Governor exercising his individual judgment so directs in the case of a person employed in connection with the affairs of a Province, be defrayed out of and charged on the revenues of the Federation or of the Province as the case may be.

ALBANIA (1928)

Section 204.—Only Albanian subjects may be employed in Government positions. Foreigners may be employed as specialists, but their contracts may not exceed 5 years' duration.

COSTA RICA (1942)

Section 36.—No person shall be molested or persecuted for any act which is not in violation of the law, or for the expression of political opinions.

However, neither clergymen nor laymen shall engage in political propaganda of any kind, whether for religious reasons, or by taking advantage of the religious beliefs of the people.

CHAPTER VIII

INSTITUTION OF FAMILY AND MARRIAGE

SWITZERLAND

*Section 52 (a).—The bleeding of animals for slaughter which have not been previously stunned is expressly forbidden. This provision applies to all methods of slaughter and to all kinds of animals.

* Article 54.—The right to marry is under the protection of the Confederation.

No impediment to marriage may be based upon grounds of religious belief, the poverty of either party, their conduct, or any other considerations of a police nature.

Marriages concluded in any Canton or abroad in accordance with the law there prevailing shall be recognised as valid throughout the Confederation.

A wife acquires on marriage the citizenship of the Commune of her husband.

Children born before the marriage are legitimised by the subsequent marriage of their parents.

No marriage fee or similar impost may be levied on either husband or wife.

WEIMAR GERMANY

Article 119.—Marriage, as the foundation of family life and of the preservation and growth of the nation, is under the special protection of the Constitution.

It rests upon the equal rights of both sexes.

The preservation of the purity and health of the family and its social advancement is the task both of the State and of the local authorities. Families with a large number of children have a right to corresponding provision.

Motherhood has a claim upon the protection and care of the State.

Article 120.—The rearing of the rising generation, in physical, mental and social efficiency, is the highest duty and natural right of the parents, the accomplishment of which is watched over by the community of the State.

Article 121.—By means of legislation, opportunity shall be provided for the physical, mental and social nature of illegitimate children equal to that enjoyed by legitimate children.

Article 122.—Young persons shall be protected against exploitation, as well as against moral, spiritual, or bodily neglect. Both the State and the local authorities must undertake the necessary arrangements.

CZECHOSLOVAKIA

Article 126.—Marriage, the family and motherhood shall be under the special protection of the law.

JUGOSLAVIA

**Article 23.—Marriage shall be under the protection of the State.

DANZIG

Article 80.—Marriage, as the foundation of family life, shall be placed under the special protection of the State. It shall rest upon the equality of rights of both sexes.

Large families shall have a claim to corresponding special support. Motherhood shall have a claim to the protection and care of the State.

Article 81.—The education of children to physical, moral and social efficiency shall be the supreme duty and natural right of the parents ; the political community shall supervise the performance of these duties.

Article 82.—The laws of the State shall provide the same opportunities of physical, moral and social development for illegitimate children as for children born in wedlock.

Article 83.—Young persons shall be protected against exploitation as well as against moral, spiritual and physical neglect. Compulsory measures to ensure their welfare may only be adopted if sanctioned by the law.

U. S. S. R.

Article 122.—Women in the U. S. S. R. are accorded equal rights with men in all spheres of economic, state, cultural, social and political life.

The possibility of exercising these rights is ensured to women by granting them an equal right with men to work, payment for work, rest and leisure, social insurance and education, and by state protection of the interests of mother and child, pre-maternity and maternity leave with full pay, and the provision of a wide network of maternity homes, nurseries and kindergartens.

IRELAND

Section 41 (1).—1°. The State recognises the family as the natural primary and fundamental unit group of society, and as a moral institution possessing inalienable and impresciptible rights, antecedent and superior to all positive law.

2°. The State therefore, guarantees to protect the family in its constitution and authority, as the necessary basis of social order and as indispensable to the welfare of the nation and the State.

(2) 1°. In particular the State recognises that by her life within the home, woman gives to the State a support without which the common good cannot be achieved.

2°. The State shall, therefore, endeavour to ensure that mothers shall not be obliged by economic necessity to engage in labour to the neglect of their duties in the home.

(3) 1°. The States pledges itself to guard with special care the institution of marriage, on which family is founded, and to protect it against attack.

2°. No law shall be enacted providing for the grant of a dissolution of marriage.

3°. No person whose marriage has been dissolved under civil law of any other State but is a subsisting valid marriage under the law for the time being in force within the jurisdiction of the Government and Parliament established by this constitution shall be capable of contracting a valid marriage within that jurisdiction during the life time of the other party to the marriage so dissolved.

LITHUANIA (1928)

Section 102.—To promote temperance, the entirety of the citizens of a commune has the right to decide with regard to the maintenance of establishments for the sale of intoxicants in its residential region.

CHAPTER IX

RELIGION

UNITED STATES OF AMERICA

(1791).

Article 1.—The Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech or of the press; or the rights of the people peaceably to assemble and to petition the Government for a redress of grievances.

SWITZERLAND

Article 49.—Liberty of conscience and creed is inviolable.

No person may be compelled to become a member of any religious association, submit to any religious instruction, perform any act of religion, or, incur any penalties, of any kind whatsoever, by reason of his religious opinion.

Persons exercising the authority of parent or guardian are entitled, in conformity with the foregoing principles, to determine the religious education of children up to the age of sixteen years.

The exercise of civil or political rights may not be limited by any ecclesiastical or religious requirements or conditions of any kind whatsoever.

No person may refuse, on the ground of religious opinion, to fulfil any obligation of citizenship.

No person may be compelled to pay taxes the proceeds of which are specifically appropriated in payment of the purely religious expenses of any religious community of which he is not a member.

The application of this principle will be determined by Federal legislation.

Article 50.—The free exercise of religion is guaranteed within limits compatible with public order and morality.

The Cantons and the Confederation may take measures necessary to maintain public order and peace between the members of different religious communities and to prevent encroachments by ecclesiastical authorities upon the rights of citizens and of the State.

Legal proceedings, under public or private law, arising out of the formation of religious communities, or the division of existing religious communities, may be brought by way of petition before the competent Federal authorities.

No bishopric may be created within Swiss territory without the approval of the Confederation.

***Article 51.**—The Order of Jesuits, and societies affiliated with it, may not be admitted into any part of Switzerland, and all activities in Church and school are forbidden to their members.

This prohibition may be extended by Federal decree to other religious orders whose activity is inimical to the State or disturbs the peace between different religions.

***Article 52.**—The founding of new religious houses or religious orders, and the re-establishment of those which have been suppressed, are forbidden.

*Article 53.—Para 2.—The control of burial places is subject to the civil authorities which must provide that every deceased person may receive decent burial.

Article 58.—Para 2.—Ecclesiastical jurisdiction is abolished.

WEIMAR GERMANY

Article 124.—All Germans have the right to form unions and associations for purposes not in contravention of the penal laws. This right may not be restricted by preventive regulations. The same provisions apply to religious unions and associations

Every union is at liberty to acquire legal rights in accordance with the provisions of the Civil Code. These rights shall not be refused to a union on the ground that its objects are of political, social-political, or religious nature.

Article 135.—All inhabitants of the Reich enjoy full liberty of faith and of conscience. The undisturbed practice of religion is guaranteed by the Constitution and is under State protection. The General laws of the State shall remain unaffected hereby.

Article 136.— Civil and political rights and duties are neither dependent upon nor restricted by the practice of religious freedom.

The enjoyment of civil and political rights, as well as admission to official posts, are independent of religious creed.

No one is bound to disclose his religious convictions. The authorities have the right to make enquiries as to membership of a religious body only when rights and duties depend upon it or when the collection of statistics ordered by law requires it.

No one may be compelled to take part in any ecclesiastical act or ceremony or to participate in religious practices or to make use of any religious form of oath.

Article 137.—There is no State Church. Freedom of association is guaranteed to religious bodies. The union of religious bodies within the territory of the Reich is subject to no restrictions.

Every religious body regulates and administers its affairs independently within the limits of the laws applicable to all. It appoints its officers without the co-operation of the State or of the local authorities.

Religious bodies acquire legal status in accordance with the general regulations of the civil code.

Religious bodies remain legal corporations in so far as they have been so up to the present. Equal rights shall be granted to other religious bodies upon application if their constitution and the number of their members offer a guarantee of permanence. Where several such religious bodies, which are legal corporations, combine to form one union, this union becomes a legal corporation.

Religious bodies, which are legal corporations, are entitled to levy taxes on the basis of the civic tax rolls, in accordance with the provisions of the law of the States.

Associations, devoting themselves to the common promotion of a world philosophy, shall be placed upon an equal footing with religious bodies.

So far as further regulations may be necessary for the carrying out of the provisions, they shall be prescribed by legislation of the States.

Article 138.—Outstanding State liabilities to religious bodies, whether founded upon legislation, contract or exceptional legal title shall be redeemed by legislation by the States. The governing principles of such legislation shall be prescribed by the Reich.

The property and other rights of religious bodies and unions in respect of their institutions, foundations, and other property devoted to public worship, education and social welfare, are guaranteed.

Article 139.—Sundays and holidays recognised by the State shall remain under legal protection as days of rest and spiritual improvement.

Article 140.—The members of the armed forces are guaranteed the necessary free time for the performances of their religious duties.

Article 141.—Religious bodies have the right of entry for religious purposes into the army, hospitals, prisons, or other public institutions, so far as is necessary for the conduct of public worship and religious ministrations, but any form of compulsion is forbidden.

CZECHOSLOVAKIA

Article 121.—Liberty of conscience and of religion shall be guarateed.

Article 122.—Every inhabitant of the Czechoslovak Republic shall enjoy in the same degree as nationals of the Republic the right to practise in public or in private any faith, religion or creed whatsoever, so far as the practice thereof does not violate the law or public order and morality.

Article 123.—No person may be constrained either directly or indirectly to take part in any religious act whatsoever, exception being made of the rights of parents and guardians.

Article 124.—All religions shall be equal before the law.

Article 125.—The exercise of certain religious practices may be prohibited if they are contrary to public order or morality.

****Article 128.**—1. All citizens of the Czechoslovak Republic shall be in all respects equal before the law and shall enjoy the same civil and political rights, without distinction of race, language or religion.

2. Differences of religion, creed, faith or language shall not prejudice any citizens of the Czechoslovak Republic in any way, within the limits laid down by general laws, particularly in ragard to public employment, office or honours and to the exercise of any trade or calling.

* * * * *

4. The foregoing provisions shall be, without prejudice to the rights of State authorities in such matters in virtue of laws at present in force or hereafter promulgated, for the purpose of ensuring public order, the safety of the State, or effective supervision by the State.

****Article 130.**—Inasmuch as citizens are entitled in accordance with general laws to establish, manage and administer, at their own expense, religious, charitable and social institutions, schools and other educational establishments, all citizens, without distinctions of nationality, language, religion or race, shall be on an equality and shall have the right to the free use of their own language and the free exercise of their own religion in such institutions.

JUGOSLAVIA

Article 12.—Liberty of religion and of conscience shall be guaranteed. All recognised religions shall be equal before the law, and may be practised in public.

The enjoyment of civil and political rights shall be independent of the practice of any religion. No person may refuse the performance of civil or military obligations and duties on the ground of the requirements of his religion.

All religious bodies shall be deemed to be recognised which have already obtained legal recognition in any part of the kingdom. Other religions may receive recognition only by law. Recognised religions shall, within the limits of the law, be self-governing as regards the regulation of their internal affairs and the administration of their funds and endowments.

No person may be compelled to practise his religion in public. No person may be compelled to take part in any religious act ceremonies practices, or rites with the exception of State festivals and ceremonies, and with the exception, in such cases as are provided for by law, of persons under the authority of a parent or guardian, or under military authority.

Recognised religious bodies may maintain relations with their supreme religious heads even outside the frontiers of the State so far as may be necessary in accordance with the spiritual requirements of their religion. Such relations shall be regulated by law.

So far as the State Budget may provide funds for religious purposes, these funds shall be divided amongst the various recognised religious bodies in proportion to the numbers of their adherents and according to the actual proved necessities.

Ministers of religion may not use their spiritual authority in the interest of parties, whether in the churches, through writings of a religious character, or otherwise in the execution of their official functions.

DANZIG

Article 84.—.....Notification of religious processions shall not be required.

Article 85.—All nationals shall have the right to form unions or associations, provided their objects are not in contravention of the penal laws. This shall also apply to religious unions and associations. Every union shall be at liberty to acquire legal presonality in accordance with the provisions of th civil code. This right shall not be refused to any union on the ground that it has been formed for political, social-political or religious objects.

Article 96.—There shall be complete freedom of creed and conscience. The undisturbed practice of religion shall be assured, and shall be placed under the protection of the State. Enjoyment of civil and political rights, and admission to public offices shall be independent of religious creed.

No one shall be bound to disclose his religious convictions. The public authorities shall not enquire as to any person's membership of a religious body where rights and duties are involved on account of such membership or when a legally instituted statistical census makes such enquiry necessary.

No one shall be compelled to take part in any ecclesiastical act orceremony.

Where the existing law provides for the taking of an oath according to a religious formula the oath may also be validly administered if the person to be sworn shall omit the religious formality, and shall declare "I swear". Apart from this, the rest of the oath as prescribed by law shall remain unchanged.

Religious bodies in which the use of a solemn declaration is customary in place of the oath shall be entitled to make use of it

Article 97.—Religious bodies which are public law corporations shall be entitled to collect contributions from their members, based on the rate assessment lists.

Article 98.—The ownership and other rights of religious bodies and associations in their institutions, foundations and other property devoted to purposes of ownership, education or social welfare are guaranteed.

Article 99.—In so far religious services and ministrations are needed in hospitals, prisons and other public institutions religious bodies shall be admitted for religious purposes, but no coercion shall be exercised.

Article 100.—Sunday and the public holidays recognised by the State shall be protected by law as days of rest and spiritual refreshment.

U. S. S. R.

Article 124.—In order to ensure to citizens freedom of conscience, the church in the U. S. S. R. is separated from the State, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens.

IRELAND

Section 40 (6)2°.—Laws regulating the manner in which the right of forming associations and unions and the right of free assembly may be exercised shall contain no political, religious or class discrimination.

Section 44 (1)1°.—The State acknowledges that the homage of public worship is due to Almighty God. It shall hold His Name in reverence and shall respect and honour religion.

2°—The State recognises the special position of the Holy Catholic Apostolic and Roman Church as the guardian of the faith professed by the great majority of the citizens.

3°—The State also recognises the Church of Ireland, the Presbyterian Church in Ireland, the Methodist Church in Ireland, the Religious Society of Friends in Ireland, as well as the Jewish congregations and the other religious denominations existing in Ireland at the date of the coming into operation of this constitution.

(2) 1°—Freedom of conscience and the free profession and practice of religion are, subject to public order and morality, guaranteed to every citizen.

2°—The State guarantees not to endow any religion.

3°—The State shall not impose any disabilities or make any discrimination on the ground of religious profession, belief or status.

4°—Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

5°—Every religious denomination shall have the right to manage its own affairs, own, acquire and administer property, movable and immovable, and maintain institutions for religious or charitable purposes.

6°—The property of any religious denomination or any educational institution shall not be diverted save for necessary works of public utility and on payment of compensation.

CHINA

Article 13.—The people shall have the freedom of religious belief.

AUSTRALIA

Article 116.—The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion, and no religious test shall be required as a qualification for any office or public trust under the Commonwealth.

BULGARIA (1879)

Section 41.—No one shall be entitled, on the ground of his religious convictions, to evade compliance with existing laws which are generally binding on all.

BRAZIL (1942)

Section 122 (V).—The cemeteries shall be secular in character and shall be administered by the municipal authorities.

COSTA RICA (1942)

Section 36.—No person shall be molested or persecuted for any act which is not in violation of the law, or for the expression of political opinions.

However, neither clergymen nor laymen shall engage in political propaganda of any kind, whether for religious reasons, or by taking advantage of the religious beliefs of the people.

CHAPTER X

LANGUAGE AND EDUCATION

SWITZERLAND

Article 49.—Para 3. Persons exercising the authority of parent or guardian are entitled, in conformity with the foregoing principles, to determine the religious education of children up to the age of sixteen years.

Article 116.—The three principal languages spoken in Switzerland German, French and Italian, are the national languages of the Confederation.

WEIMAR GERMANY

Article 113.—Sections of the population of the Reich speaking a foreign language may not be restricted, whether by way of legislation or administration, in their free racial development; this applies specially to the use of their mother tongue in education, as well as in questions of internal administration and the administration of justice.

Article 142.—Art and science, and the teaching thereof, are free.

The State guarantees their protection and participates in furthering them.

Article 143.—Provision shall be made for the education of the young by means of public institutions. The Reich, the States and the local authorities shall co-operate in their organization. The training of teachers shall be regulated in a uniform manner for the whole Reich, on the general lines laid down for higher education.

Teachers in public schools have the rights and duties of State officials.

Article 144.—The whole system of education is under the supervision of the State, which may assign a share in such work to the local authorities School inspection is carried out by competent, trained and expert officials of high rank.

Article 145.—School attendance is compulsory for all. The fulfilment of this obligation is provided for by primary schools, with at least an eight years' course, followed by continuation schools with a course extending to the completion of the eighteenth year of age.

Instruction and all accessories are free of charge in the primary and continuation schools.

Article 146.—The public system of education shall be organically developed. Upon the basis of primary schools common to all shall be built up a system of secondary and higher education. The governing consideration in the building up of this system shall be the diversity of vocations and, as regards the admission of a child into any particular school, its capacity and inclination, not the economic and social standing of its parents.

Upon the request of persons responsible for the education of children, however, primary schools in accordance with their religious creed or philosophic views may be established in a locality, so far as is possible without interference with the orderly development of the school system, especially

as regards the general principles of the first paragraph of this Article. The wishes of persons responsible for the education of children shall be taken into account as far as possible. Further details shall be determined by legislation by the States in accordance with principles laid down by a law of the Reich.]

Public provision shall be made by the Reich, the States and the local authorities, for the admission of persons of small means to secondary and higher educational institutions; in particular, educational assistance grants shall be provided for the parents of children considered suitable for education in secondary and higher schools until the completion of their education.

Article 147.—Private schools, as a substitute for public schools, require the approval of the State, and are subject to the laws of the States. Approval may be granted when the private schools are not inferior to the public schools in their educational aims and organisation, nor in the professional qualifications of their teaching staff; further, there must be no segregation of pupils based upon the means of their parents. Approval shall be refused when the economic and legal position of the teaching staff is not sufficiently assured.

Private primary schools are permissible only when there is in a locality no public primary school corresponding to the religious creed or philosophic views of a minority of persons responsible for the education of children whose desires must be taken into consideration in accordance with Article 146, paragraph 2, or when the educational administrative authorities recognise that a special educational interest is involved.

Primary preparatory schools are to be abolished.

Private schools not serving as substitutes for public school retain their existing legal rights.

Article 148.—All schools shall aim at inculcating moral character, a civic conscience, personal and vocational efficiency, imbued with the spirit of German nationality and international goodwill.

In giving instructions in public schools, care must be taken not to give offence to the susceptibilities of those holding different opinions.

The duties of citizenship and technical education are subjects of instruction in the schools. Upon the completion of the period of school attendance, every pupil receives a copy of the Constitution.

The Reich, the States and the local authorities shall promote the organisation of popular culture, including popular high schools.

Article 149.—Religious instruction is a regular subject in schools, with the exception of undenominational (secular) schools. The giving of such instruction shall be regulated in accordance with legislation upon schools. Religious instruction shall be given in accordance with the principles of the religious body concerned, without prejudice to the right of State supervision.

The giving of religious instruction and the undertaking of spiritual duties are subject to the declared assent of the teacher; participation in religious instruction and in religious rights and ceremonies is subject to the declared assent of the person responsible for the religious education of the child.

The theological faculties in the Universities shall continue to be maintained.

Article 150.—Monuments of artistic, historic, and natural interest, and exceptional landscapes are under the protection and care of the State.

It is the business of the Reich to prevent the removal of German art treasures into Foreign countries.

CZECHOSLOVAKIA

Section 118.—Artistic activities and scientific research and the publication of the results thereof are free in so far as they do not violate the criminal law.

Article 119.—Public instruction shall be carried on so as not to be in conflict with scientific research.

Article 120.—1. Private establishments for instructions and education may be permitted only upon the conditions laid down by law.

2. Authority and control over all instruction and education shall be vested in the State authorities.

****Article 130.**—In as much as citizens are entitled in accordance with general laws to establish, manage and administer, at their own expense, religious, charitable and social institutions, schools and other educational establishments, all citizens, without distinction of nationality, language, religion or race, shall be on an equality and shall have the right to the free use of their own language and the free exercise of their own religion in such institutions.

****Article 131.**—In towns and districts, where a considerable proportion of Czechoslovak citizens speak a language other than the Czechoslovak language, facilities shall be guaranteed, within the limits laid down by general educational legislation, to enable the children of such citizens to receive instruction in their own tongue.

Instruction in the Czechoslovak language may at the same time be made obligatory.

****Article 132.**—In towns and districts where a considerable proportion of Czechoslovak citizens belong to a minority as regards race, religion or language, and where sums of public money are set aside for educational purposes in the State or municipal budgets or otherwise, a due share in the allocation and use of such sums shall be accorded to such minorities, within the limits of the general regulations concerning public administration.

****Article 133.**—The application of the principles of Articles 131 and 132, and in particular the definition of the expression " considerable proportion " shall be provided for by special legislation.

JUGOSLAVIA

***Article 3.**—The official language of the State shall be the Serb-Croat-Slovene language.

Article 16.—The arts and sciences shall be unrestricted and shall enjoy the protection and support of the State.

University education shall be unrestricted.

The State shall have authority over education.

Education shall be on a uniform basis throughout the country, with such adaptations as may be required by local conditions.

All schools shall provide instruction in morals and shall develop civic conscientiousness in a spirit of national unity and religious tolerance.

The State shall be responsible for primary education which shall be universal and compulsory.

Religious instruction shall be given in conformity with the wishes of parents or guardians, according to the various religions and in harmony with their principles.

Technical instruction shall be given in accordance with the requirements of industry.

No entrance fee, school fee, or other charge shall be imposed in public educational establishments.

The conditions upon which various kinds of private schools may be established shall be determined by law.

All educational establishments shall be under the control of the State.

The State shall encourage the fostering of nationality.

Minorities in race and language shall be given primary instruction in their mother tongue under conditions to be prescribed by law.

**Article 22.—It shall be the duty of the State to ensure that all citizens shall have an equal opportunity of preparing themselves for such economic work as they have a preference for. To this end, the State shall organise technical instruction and continued assistance for the education of poor gifted children.

DANZIG

*Article 4.—The official language shall be German.

The Polish-speaking portion of the population shall have guaranteed its free racial development by the law and the administration, in particular as regards the use of its mother-tongue in the schools and in the internal administration and as well as in the administration of justice. Details wil be determined by law.

Article 81.—The education of children to physical, moral and social efficiency shall be the supreme duty and natural right of the parents; the political community shall supervise the performance of these duties.

Article 95.—Teachers of both sexes in the public schools are officials directly under the State. This provision does not affect the obligation to maintain the schools.

Article 101.—The arts and sciences and their teaching shall be free. The State shall afford them protection, and shall be bound to promote their interests in every way.

Article 102.—The whole system of education shall be regulated by a law which shall be drafted with the co-operation of the existing organisations of the teaching profession.

The whole system of education shall be placed under the supervision of the State. School inspection shall be carried out by officials appointed or this purpose only and who have had expert training.

Article 103.—School attendance shall be compulsory for all. To this end are instituted elementary schools covering at least eight years of attendance and also continuation or technical schools for young persons of both sexes up to the end of their eighteenth year.

The maintenance of the State schools shall be the concern of the State it may associate the municipalities with it in these duties.

Teaching and educational material in the elementary and continuation schools shall be free of charge.

Article 104.—Public education shall be organised on a common undenominational system. Existing schools of other types shall continue. The legitimate wishes of the parents and guardians shall also be taken into consideration as regards any new organisation of such schools, provided that the efficiency of the educational system does not suffer.

The entire system of elementary, secondary and advanced schools is based essentially on the principle of a common school for all. In establishing this system, the guiding principle shall be preparation for the various vocations and professions. In admitting a child into any particular school, consideration shall be given to the aptitude and inclinations of the child, and to the wishes of its parents or guardians, and not to the financial or social position of its parents.

Teaching and material for teaching shall also be provided free of charge in secondary and advanced schools and universities for gifted children of parents with moderate means.

Gifted children of parents with moderate means shall be provided with assistance from public funds to attend advanced schools and universities.

Article 105.—Private schools, if substituted for State schools, shall require State authority and shall be subject to the law of the State. Such authority may only be granted if the private school is not inferior to the State school in its educational programme and organisation, nor in the scientific training of its teaching staff, and if the tendency to distinguish between pupils according to the means of their parents is not thereby encouraged. Authority shall be refused if the financial and legal position of the staff is insufficiently secured.

No further private preparatory schools shall be established and those which exist shall be abolished.

Compensation shall be awarded whenever existing private schools, including preparatory schools, are closed. Further provisions will be prescribed by law.

Article 106.—Religious instruction shall be part of the regular school curriculum. It shall be given in accordance with the principles of the religious bodies concerned, without prejudice to the State's right of supervision.

The imparting of religious instruction and the holding of services and ecclesiastical ceremonies shall be subject to the teachers' expressed willingness to undertake such duties; the right to withdraw a child from religious instruction, or from participation in religious ceremonies and acts, shall be granted in accordance with the expressed wishes of the person who is responsible for the religious upbringing of the child.

Article 107.—In State school-teaching, care shall be taken not to offend the susceptibilities of those holding different opinions.

Article 108.—Instruction on the duties of citizenship shall form part of the school curriculum. At the end of the period of school attendance every pupil shall be given a copy of the Constitution.

Article 109.—Objects of interest from an artistic, historic, natural and picturesque point of view shall be under the protection and care of the State.

It is the duty of the State to prevent the removal of works of art to foreign countries

U. S. S. R.

Article 40.—Laws passed by the Supreme Soviet of the U. S. S. R. are published in the languages of the Union Republics over the signatures of the President and Secretary of the Presidium of the Supreme Soviet of the U.S.S.R.

Article 110.—Judicial proceedings are conducted in the language of the Union Republic, Autonomous Republic or Autonomous Region, persons not knowing this language being guaranteed every opportunity of fully acquainting themselves with the material of the case through an interpreter and likewise the right to use their own language in court.

Article 121.—Citizens of the U. S. S. R. have the right to education.

This right is ensured by universal, compulsory elementary education; by education, including higher education, being free of charge; by the system of state stipends for the overwhelming majority of students in the universities and colleges; by instruction in schools being conducted in the native language, and by the organization in the factories, state farms, machine and tractor stations and collective farms of free vocational, technical and agronomic training for the working people.

Article 124.—In order to ensure to citizens freedom of conscience, the church in the U. S. S. R. is separated from the state, and the school from the church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens.

IRELAND

***Section 8.**—(1) The Irish language as the national language is the first official language.

(2) The English language is recognised as a second official language.

(3) Provision may, however, be made by law for the exclusive use of either of the said languages for any one or more official purposes, either throughout the State or in any part thereof.

***Section 25 (4) 5°.**—An official translation of every law enacted by the Oireachtas in the Irish language shall be issued in the English language and an official translation of every law enacted by the Oireachtas in the English language shall be issued in the Irish language.

Section 42 (1).—The State acknowledges that the primary and natural educator of the child is the family and guarantees to respect the inalienable right and duty of parents to provide, according to their means, for the religious and moral, intellectual, physical and social education of their children.

(2) Parents shall be free to provide this education in their homes or in private schools or in schools recognised or established by the State

(3) 1.°—The State shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State, or to any particular type of school designated by the State.

2.°—The State shall, however, as guardian of the common good, require in view of actual conditions that the children receive a certain minimum education, moral, intellectual and social.

(4) The State shall provide for free primary education and shall endeavour to supplement and give reasonable aid to private and corporate educational initiative, and, when the public good requires it, provide other educational facilities or institutions with due regard, however, for the rights of parents, especially in the matter of religious and moral formation.

(5) In exceptional cases, where the parents for physical or moral reasons fail in their duty towards their children, the State as guardian of the common good, by appropriate means shall endeavour to supply the place of the parents, but always with due regard for the natural and imprescriptible rights of the child.

Section 44 (2) 4°.—Legislation providing State aid for schools shall not discriminate between schools under the management of different religious denominations, nor be such as to affect prejudicially the right of any child to attend a school receiving public money without attending religious instruction at that school.

CHINA

Article 21.—The people shall have the right and obligation of receiving citizen's education.

****Article 158.**—Education and Culture shall aim at the development of the national spirit and the democratic spirit and the development of a national morality, a sound and healthy physique, sciences and the knowledge and ability of earning a livelihood.

****Article 159.**—The citizens shall have equal opportunity of receiving education.

****Article 160.**—Children of school age from six to twelve shall all receive basic education free of tuition, and those who are poor shall be supplied with books by the Government.

Citizens who have passed school age but have not received the basic education shall all receive supplementary education free of tuition, and shall be supplied with books by the Government.

****Article 161.** The various grades of government shall establish extensive scholarships to assist poor students who possess a good record in scholarship and conduct but who are unable to pursue advanced education.

****Article 162.**—All the public and private educational and cultural organizations in the whole country shall be subject to the supervision of the State in accordance with law.

****Article 163.**—The State shall pay due attention to the balanced development of education in various areas, and shall promote social education in order to raise the cultural standard of the citizens generally. Educational and cultural expenses for frontier regions and poor and unproductive

regions shall be subsidized by the National Treasury, and the more important educational and cultural enterprises may be undertaken or subsidized by the Central Government.

**Article 164.—Expenses for education, sciences and culture shall not be less than 15 per cent. of the total amount of the budget estimate in the case of the Central Government, not less than 25 per cent. of the total amount of the budget estimate in the case of the province, and not less than 35 per cent. of the total amount of the budget estimate in the case of the Hsien. Educational and cultural foundations established in accordance with law and their properties shall be protected.

**Article 165.—The State shall safeguard the livelihood and working conditions of persons engaged in education, sciences and or arts and shall, in accordance with the development of national economy, improve their treatment from time to time.

**Article 166.—The State shall encourage scientific inventions and creations and shall protect old landmarks and relics of historical, cultural or artistic interest.

**Article 167.—The State shall give encouragement or aid to following enterprises or individuals:

(1) Private-operated educational enterprises in the country with good record.

(2) Educational enterprises operated by Chinese nationals abroad with good record.

(3) Persons who have made discoveries in learning or in techniques.

(4) Persons engaged in education with good record and with long period of service.

CANADA

Section 93.—In and for each Province the Legislature may exclusively make laws in relation to education, subject and according to the following provisions:—

(1) Nothing in any such law shall prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the Province at the union.

(2) All the powers, privileges and duties at the union by law conferred and imposed in Upper Canada on the separate schools and school trustees of the Queen's Roman Catholic subjects shall be and the same are hereby extended to the dissentient schools of the Queen's Protestant and Roman Catholic subjects in Quebec.

(3) Where in any Province a system of separate or dissentient schools exists by law at the union or is thereafter established by the Legislature of the Province, an appeal shall lie to the Governor General in Council from any act or decision of any provincial authority affecting any right or privilege of the Protestant or Roman Catholic minority of the Queen's subjects in relation to education.

(4) In case any such provincial law as from time to time seems to the Governor General in Council requisite for the due execution of the provisions of this section is not made, or in case any decision of the Governor General in Council on any appeal under this section is not duly executed-

by the proper provincial authority in that behalf, then and in every such case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the provisions of this section and of any decision of the Governor General in Council under this section.

Section 133.—Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada, and of the Houses of the Legislature of Quebec; and both those languages shall be used in the respective records and journals of those Houses; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

SOUTH AFRICA

Section 137.—Both the English and Dutch languages (1) shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings of Parliament shall be kept in both languages, and all bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

ALBANIA (1928)

Section 207.—Only Albanian subjects may open private schools of various kinds, provided they conform to the law, the principles and the programmes adopted by the State or the State schools and are always under the effective control of the Government.

Foreigners may open only technical and agricultural schools with theoretical and practical programmes in conformity with the laws.

Albanian religious communities may open religious schools with the permission of the competent Ministry and in accordance with the law. The number of schools required for each community and the number of students in these schools shall be fixed by the competent Ministry by decisions of the Council of Ministers.

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(1) By "The Official Languages of the Union Act, 1925" of the Union the wor 'Dutch" was declared to include Afrikaans wherever it occurs in the present Act

CHAPTER XI

DUTIES OF CITIZENSHIP

SWITZERLAND

***Article 18.**—Every Swiss male is liable for Military Service.

Article 49.—5. No person may refuse, on the ground of religious opinion, to fulfil any obligation of citizenship.

WEIMAR GERMANY

Article 120.—The rearing of the rising generation, in physical, mental and social efficiency, is the highest duty and natural right of the parents, the accomplishment of which is watched over by the community of the State.

Article 132.—It is the duty of every German to undertake the duties of honorary offices according to the provisions of the laws.

Article 133.—All citizens are bound, according to the provisions of the laws, to undertake personal service for the State and the local authorities.

Military service is organised in accordance with the terms of the Military Defence Law of the Reich. This Law determines also to what extent certain fundamental rights must be restricted for members of the armed forces to ensure the fulfilment of their duties and the maintenance of military discipline.

Article 134.—All citizens, without exceptions, contribute in proportion to their means to all public taxes, in accordance with the provisions of the laws.

Article 153.—Para 3. The ownership of property entails obligations. Its use must at the same time serve the common good.

Article 155.—Para 3. The cultivation and full utilization of the land is a duty the land owner owes to the community. Increment in the value of landed property, not accruing from any expenditure of labour and capital upon the land, shall be devoted to the uses of the community.

Article 163.—It is the moral duty of every German, without prejudice to his personal liberty, tomake such use of his mental and bodily powers as shall be necessary for the welfare of the community.

CZECHOSLOVAKIA

Article 127.—1. Every able-bodied male citizen of the Czechoslovak Republic shall be bound to undergo military training and to obey when summoned to the defence of the State.

JUGOSLAVIA

Article 21.—Every citizen shall be bound to obey the laws, serve the interests of the national community, defend his country and pay taxes in accordance with his economic capacity and the requirements of the law.

DANZIG

Article 81.—The education of children to physical, moral and social efficiency shall be the supreme duty and natural right of the parents; the political community shall supervise the performance of these duties.

Article 87.—It is the duty of every national to protect the Constitution against unlawful attacks.

Article 88.—All nationals without distinction shall contribute in proportion to their means to the discharge of all public liabilities, in accordance with the provisions of the laws.

Article 89.—All nationals shall be bound according to the provisions of the law to give personal service to the State or the Municipality.

Article 90.—All nationals shall be bound to undertake official duties of an honorary nature in accordance with the provisions of the laws.

U. S. S. R.

Article 12.—In the U. S. S. R. work is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: "He who does not work, neither shall he eat."

The principle applied in the U. S. S. R. is that of socialism: "From each according to his ability, to each according to his work".

Article 130.—It is the duty of every citizen of the U. S. S. R. to abide by the Constitution of the Union of Soviet Socialist Republics, to observe the laws, to maintain labour discipline, honestly to perform public duties, and to respect the rules of socialist intercourse.

Article 131.—It is the duty of every citizen of the U. S. S. R. to safeguard and strengthen public, socialist property as the sacred and inviolable foundation of the Soviet system, as the source of the wealth and might of the country, as the source of the prosperous and cultured life of all the working people.

Persons committing offences against public, socialist property are enemies of the people.

Article 132.—Universal military service is law.

Military service in the Workers' and Peasants' Red Army is an honourable duty of the citizens of the U. S. S. R.

Article 133.—To defend the fatherland is the sacred duty of every citizen of the U. S. S. R. Treason to the country, violation of the oath of allegiance, desertion to the enemy, impairing the military power of the state, espionage is punishable with all the severity of the law as the most heinous of crimes.

IRELAND

***Section 9 (2).**—Fidelity to the nation and loyalty to the State are fundamental political duties of all citizens.

CHINA

Article 19.—The people shall have the duty of paying taxes in accordance with law.

Article 20.—The people shall have the duty of performing military services in accordance with law.

Article 21.—The people shall have the right and obligation of receiving citizen's education.

BULGARIA (1879)

Section 41.—No one shall be entitled, on the ground of his religious convictions, to evade compliance with existing laws which are generally binding on all.

CHAPTER XII

UNENUMERATED RIGHTS

U. S. A.

(1791).

Article IX.—The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people

(1791).

Article X.—The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

CHINA

Article 22.—All other freedoms and rights of the people, not detrimental to social order and public interests, shall be protected by the constitution.

PORTUGAL (1933)

Section 8 (20) 1.—The enumerations of the above rights and guarantees shall not exclude any others derived from the Constitution or the laws, it being understood that citizens should always exercise them without injuring the rights of third parties or damaging the interests of society or the principles of morality.

CHAPTER XIII

ENFORCEMENT OF FUNDAMENTAL RIGHTS

U. S. A.

(1787).

***Article I Section 9 (2).**—The privilege of the writ of *habeas corpus* shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it.

(1787).

***Article III.—Section 2 (i).**—The judicial power shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more states, between a State and citizens of another State, between citizens of the same State claiming lands under grants of different States and between a State, or the citizens thereof, and foreign States, citizens or subjects.

(1787).

***Article VI (2).**—This Constitution and the laws of the United States which shall be made in pursuance thereof and all treaties made, or which shall be made, under the authority of the United States, shall be supreme law of the land, and the Judges in every States shall be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding.

(1791).

Article V.—No person shall be held to answer for a capital or otherwise infamous crime unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use without just compensation.

SWITZERLAND

***Article 5.**—The Confederation guarantees to the Cantons their territory, their sovereignty within the limits fixed by Article 3, their Constitutions, the liberty and rights of their people, the constitutional rights of the citizens and the rights and powers conferred by the people on the authorities.

***Article 66.**—Federal legislation will prescribe the limits within which a Swiss citizen may be deprived of his political rights.

***Article 113.**—The Federal Tribunal also has jurisdiction in regard to—

2. Disputes between Cantons in matters of public law;

3. Complaints of violation of the constitutional rights of citizens and complaints by individuals of violation of concordates and treaties.

Administrative disputes are excluded from its jurisdiction, subject to the provisions of Federal legislation.

WEIMAR GERMANY

***Article 19.**—Constitutional controversies within a State in which no Court exists for their settlement and disputes, not of a private nature between different States or between the Reich and a State, are decided, upon an application from one of the parties, by the Supreme Court of the German Reich unless another Court of the Reich is competent.

The President of the Reich carries out the decision of the Supreme Court.

***Article 48.**—Where public security and order are seriously disturbed or endangered within the Reich the President of the Reich may take the measures necessary for their restoration intervening in case of need with the help of armed forces. For this purpose he is permitted, for the time being, to abrogate either wholly or partially the fundamental rights laid down in Articles 114, 115, 117, 118, 123, 124, and 153. The President of the Reich must, without delay, inform the Reichstag of any measures taken in accordance with paragraph 1 or 2 of this Article. Such measures shall be abrogated upon the demand of the Reichstag.

Where there is danger in delay, the State Government may take provisional measure of the kind indicated in paragraph 2, for its own territory. Such measures shall be abrogated upon the demand of the President of the Reich or the Reichstag.

Details are to be determined by a law of the Reich.

Article 133.—Military service is organized in accordance with the terms of the Military Defence Law of the Reich. This law determines also to what extent certain fundamental rights must be restricted for members of the armed forces to ensure the fulfilment of their duties and the maintenance of military discipline.

CZECHOSLOVAKIA

***Article 1.**—1. Enactments which are in conflict with the Constitutional Charter or with laws which may supplement or amend it are invalid.

2. The Constitutional Charter may be altered or amended only by laws specifically designated as Constitutional Laws (See Article 33.)

Article 113.—3. Restrictions may be imposed by law, particularly as regards meetings in public places, the formation of associations for purposes of profit, and the participation of foreigners in political associations. The law may likewise determine what restrictions may be placed on the application of the principles of preceding Sections in case of war or of the outbreak of internal troubles seriously threatening the republican form of the State, the Constitution or public peace and order.

DANZIG

Article 71.—Fundamental rights and duties shall govern the direction a determine the scope of legislation, the administration of justice and the dduct of public affairs.

IRELAND

***Section 15 (4).**—1°. The Oireachtas shall not enact any law which is in any respect repugnant to this constitution or any provision thereof.

2°—Every law enacted by the Oireachtas which is in any respect repugnant to this constitution or to any provision thereof shall, but to the extent only of such repugnancy, be invalid.

Section 34 (3).—1°. The courts of first instance shall include a High Court invested with full original jurisdiction in and power to determine all matters and questions whether of law or fact, civil or criminal.

2°.—The jurisdiction of the High Court shall extend to the question of the validity of any law having regard to the provisions of this constitution, and in all cases in which any such matters shall come into question the High Court alone shall exercise original jurisdiction.

Section 40 (3).—1°. The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.

CHINA

Article 23—The freedoms and rights enumerated in the various articles above, except what is necessary for preventing an infringement of the freedom of other persons, averting an urgent crisis, maintaining social order or promoting public interests, may not be restricted by law.

	United States (1787)	Switzerland (1874) Article	Weimar Germany (1919) Article	Czechoslovakia (1920) Article	Jugoslavia (1921) Article	Danzig (1922) Article	Soviet Russia (1936) Article	Ireland (1937) Section	China (1946) Article	Other countries Section
I. Citizenship and Nationality.	Art. XIV, Sec. 1 (1868).	43, Para 1 44, Para 2, 3 & 4. 54, Para 4.	110, Para 1.	4	4	72	21	9 (1)	3	...
II. Rights of Foreign Citizens.	...	...	...	(A) (B)	...	...	(C)	...	...	(D)
III. Rights to Freedom.										
1. Freedom of Person.	Art. IV (1791).	...	114, Para 1.	107-1 & 2.	5, Para 1.	74, Para 1.	127	40 (4) 1° & 3°.	8	...
Slavery.	Art. XIII (1865).	...	...	(E)	...	...	...	...	...	...
2. Judicial safeguards to secure freedom of person.										
(i) Habeas Corpus.	Art. I, Sec. 9 (2), (1787).	...	114, Para 2.	...	5, Para 2 & 3.	74, Para 2.	...	40 (4) 2° & 3°.	8	..

(A) 106—2 (Right to protection of life and property).
(B) 122 (Right to freedom of worship).
(C) 129 (Right of asylum for defending the interests of the working people etc.).
(D) Albania: 204 (Employment of foreigners). 207 (Right to open schools).
215 (Right to protection of life and property, but no right to own certain kinds of property).
Poland: 95 (Right to protection of life, liberty and property. Reciprocity in the grant of fundamental rights).
Portugal: 7 (Reciprocity in grant of Fundamental Rights).
(E) 107—2 (Personal service not to be required by public authorities).

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	United States	Switzerland Article	Weimer Germany Article	Czechoslovakia Article	Jugoslavia Article	Danzig Article	Soviet Russia Article	Ireland Section	China Article	Other countries Section
(ii) Trial by Jury.	Art. III, Sec. 2 (3), (1787). Art. V-VII (1791).	106. Para 2.	...	95-3 & 4.	...	...	103	38 (5).	...	Australia: 80.
(iii) Trial in the district where the crime is committed.	Art. VI (1791).	...	...	...	...	...	...	...	...	...
(iv) Speedy and public trial.	Art. VI (1791).	...	...	...	...	...	111	...	...	...
(v) Assistance of counsel for defence.	Art. VI (1791).	..	...	...	7	...	111	...	...	...
(vi) Accused not to be forced to be a witness against himself.	Art. V (1791).	...	...	...	...	...	...	...	...	...
(vii) Witnesses to be confronted with the accused.	Art. VI (1791).	...	...	...	...	...	...	...	...	...
(viii) Compulsory process for obtaining witnesses.	Art. VI (1791).	...	...	...	...	...	...	...	...	...
(ix) Excessive bail, excessive fine, cruel and unusual punishments.	Art. VIII(1791).	65 (Capital and corporal punishments).	...	...	9 (Capital punishment).	...	...	...	...	(A)

(x) Punishment only in accordance with provisions of law.	Art. V (1791). Art. XIV, Sec. 1 (1868).	...	...	111-2.	8	...	...	38 (1).	...	...
(xi) Bill of attainder.	Art. I, Sec. 9 (3) & Sec. 10 (1) (1787).	...	...	...	...	...	...	...	...	...
(xii) Extraordinary tribunals.	...	58, Para 1.	105 &106.	94-3 & 95-5	6	62	...	38 (3) &(4).	...	...
(xiii) Trial by one's legal judge.	...	58, Para 1.	105	94-2.	6	62	...	...	...	...
(xiv) Retroactive criminal laws.	Art. I, Section 9 (3) & Section 10 (1) (1787).	...	116	...	...	...	...	15 (5)	...	...
(xv) Protection from trial for a second time for the same offence.	Art. V (1791).	...	...	...	...	...	...	...	...	...
3. Freedom of expression including freedom of press.	Art. I (1791).	55	118. 130, Para 2 (for officials).	113-1 117 (*Inter alia* for labourers)	12	79 (*Inter alia* no restrictions on the ground of one's work or appointment). 93 (for officials).	125 (a) & (b).	40 (6) 1° i.	11	(B)
Freedom of art, science, teaching and research.	...	...	142	118	...	101	...	...	11	...

(A) Belgium : 12 (No punishment by confiscation and property).
(B) Greece : 14 (Only citizens to publish Newspapers). Costa Rica. : 36 (limitations on freedom of expression of clergymen).

	United States	Switzerland Article	Weimar Germany Article	Czechoslovakia Article	Jugoslavia Article	Danzig. Article	Soviet Russia Article	Ireland Section	China Article	Other countries Section
4. Freedom of association and combination.	...	56	(A)	113-2 & 3. 114 (for labourer	14. 33 (for labourers).	85. 98 (for officials). 113 (for labourers).	126	40 (6) 1° iii & 2°.	14	...
5. Freedom of Assembly.	Art. I (1791).	...	123	113-1 & 3.	14	84	125 (c) & (d).	40 (6) 1° ii & 2°.	14	...
6. Inviolability of Residence.	...	...	115	112	11	86	128	40(5).	..	...
Quartering.	Art. III (1791).	...	...	...	...	...	...	..	...	...
7. Freedom from unreasonable search	Art. IV (1791).	...	.	...	11	...	...	...	...	...
8. Privacy of correspondence.	...	...	117	116	17	78	128	...	12	...
9. Right to keep and bear arms.	Art. II (1791).	...	...	...	...	...	...	...	...	...
10. Freedom from ecclesiastical jurisdiction.	...	58, para 2.	...	...	...	...	...	...	...	...
IV. Rights to Free Movement.										
1. Freedom of movement, residence, acquiring of property etc. within the State.	Art. XIV, Sec. 1, (1868).	45	111	108	10	75	...	....	10	Albania: 202.

Extradition from State or place of domicile.	...	44, Para 1. 67.	...	...	10	...	...	...	...	...
2. Right to emigration.	..	...	112 Para 1.	110	...	76, para 1.	...	...	...	..
V. Equality. 1. Equality before law.	Art XIV, Sec. 1. (1868).	4	109, para 1.	128-1 & 4.	4	73, para 1.	...	40(1).	5	...
2. Public legal privileges, titles of nobility, badges of honour, etc.	Art. I, Sec. 9 (8) and Sec. 10 (1), (1787).	4	109, para 3-6.	106-1.	4	73, para 3-7.	...	40(2).	...	...
3. Equality of rights to women.	Art. XIX (1919) (Right to vote).	...	(B)	106-1.	...	(C)	122. 137.	9(1)3°.	7	Indi : 275.
4. Equality of rights to all nationalities, racial and religious communities.	Art. XIII (1865). Art. XV (1870).	..	136, para 1 & 2.	106-2. 128-1, 2 & 4.	...	...	96, para 1.	123. 135.	...	Indi : 293.
5. Equality of rights among citizens of different federating units.	Art. IV, Section 2(1), (1787). Art. XIV, Sec. 1, (1868).	60	110, para 2.	...	...	...	...	...	...	Au tr. : 117.
VI. Economic Rights.										
1. Statement of economic ideals.	...	...	151 to 153	...	...	...	4 to 12.	43(2). 45.	142	...
2. Regulation of different aspects of economic life such as housing, land settlement & co-operation.	...	..	155 & 156.	...	26 & 27, 29 & 30, 34 & 35, 39, 41 to 43.	111 & 112.	...	43(2). 45.	143 to 147, 149, 151 [illegible]	...

(A) 124—130, para 2 (for officials). 159 (for labourers). 137 para 2 (for religious bodies).

(B) 109, Para 2 & 119, Para 1 (in respect of marriage). 128, Para 2 (admission to public office).

(C) 73, Para 2 & 80 (in respect of marriage). 91, Para 1 (admission to public offices).

	United States	Switzerland Article	Weimar Germany Article	Czechoslovakia Article	Jugoslavia Article	Danzig Article	Soviet Russia Article	Ireland Section	China Article	Other countries Section
(i) Freedom of Trade & Industry.	...	31, para 1.	151, para 3.	...	...	...	...	45(2) (iii).	148	Canada: 12. Australia: 92. South Africa: 136. India: 297.
(ii) Freedom of Contract.	...	...	152	...	25 & 36.	...	...	...	...	...
(iii) Development of backward and frontier provinces.	...	...	...	...	...	...	...	...	147, 168 & 169.	...
(iv) Workers' and Economic Councils.	...	...	165	...	44	115	..	...	...	...
3. Right to property & inheritance and conditions of expropriation.	Art. V (1791). Art. XIV, Sec. 1 (1868).	...	(A)	109	37 & 38. 40.	110	8 to 10.	(B)	143	(C)
4. Safeguards to Middle Classes.	...	...	164	...	...	...	...	...	...	...
5. Safeguards to manufacturers and producers.	...	...	...	...	...	..	...	45(3).	...	...
6. Safeguards to labourers.										
(i) Slavery, serfdom and forced labour.	Art. XIII (1865)	...	...	107-2.	...	...	...	...	...	...

(ii) Freedom of expression, association & combination.										
(iii) Economic well-being.	...	...	157, para 1.	...	23, para 1 & 3.	...	...	...	153, para 1.	...
(a) Right to work.	...	...	163, para 2.	...	...	...	118	45(2) (i).	15. 152.	...
(b) Right to leisure.	...	...	160	...	...	...	119	...	...	...
(c) Right to living wage.	...	...	...	...	...	...	...	45(2)(i).	...	...
(d) Protection against sickness, old age, unemployment, disablement etc.	...	34(a). 34(c) para 1 & 2. 48.	161. 163, para 2.	...	30 & 31.	114	120	45(4)(i).	150. 155.	...
(e) Workers and economic councils.	...	...	165	...	44	115	...	..	...	...
(f) Others.	...	...	(D)	...	(E)	...	...	...	154 (labour conciliation)	(F)
(iv) Safeguards for particular sections of labourers										
(a) Women	...	...	161	...	23, para 2.	83	122	41(2). 45(4).	153, para 2.	...
(b) Children	...	...	122	...	23, para 2.	83	...	45(4).	153, para 2.	...

(A) 138, para 2 (property of religious bodies). 153, 154 & 155, para 4.
(B) 40(3)2°. 43. 44(2)6° (property of religious & educational institutions).
(C) India : 299 and 300. Greece : 20 (Modifications of bills and donations).
(D) 157, para 2 (uniform labour code).162 (International safeguards of labour interests).
(E) 23, para 3 (number of working hours). 22 (Technical Education).
(F) Austria : 32 (free choice of occupation). Estonia: 18, para 3 (Right to strike).

	United States	Switzerland Article	Weimar Germany Article	Czechoslovakia Article	Jugoslavia. Article	Danzig Article	Soviet Russia Article	Ireland Section	China Article	Other countries Section
(c) Others.	...	...	158 (Intellectual workers).	...	(A)	...	...	...	...	...
VII. Political Rights.										
1. Statement of political objectives.	...	...	...	...	...	...	1 to 3.	...	137 to 141.	...
2. Right of democratic citizenship.										
(i) Right to petition.	Art. I (1791).	57	126	...	15	...	...	...	16	...
(ii) Right to public office.	...	...	(B)	...	19	(C)	...	...	18	(D)
(iii) Other rights.	(E)	...	(F)	(G)	...	...	...	...	(H)	...
3. Public servants.										
(i) Conditions of employment, and safeguards.	...	12	129 & 130. 143, para 2.	...	...	91 to 95.	...	...	...	...
(ii) Responsibility of the State for the *ultra vires* actions of its servants and the right of citizens to compensation.	...	..	131	...	18	...	...	...	24	Index: 271.
4. Rights of racial, linguistic & other minorities.	...	...	4, para 2. 113.	128 to 134.	...	77	...	...	...	...

5. Other political rights.										
(i) Right to protection: within the country and in relation to foreign powers.	...	...	112, paras 2&3.	...	20	76, paras 2&3.	...	40(3).	151	...
(ii) Rights of communes to self-government.	...	...	127	...	...	...	...	...	168 & 169 (Frontier Regions).	...
VIII Institution of family and marriage.		54	119 to 122.	126	28	80 to 82.	...	41	..	...
(i) Large families.	...	...	119, para 2.	...	...	80, para 2.	...	...	...	...
(ii) Protection of motherhood.	...	...	119, para 3.	...	...	...	122	41(2).	156	...
(iii) Children legitimate and illegitimate.		54, para 5.	120 to 122.	...	...	81 to 83.	...	...	156	...
(iv) Social Life.	...	25(a) (Prevention of cruelty to animals).	...	...	...	...	...	...	...	Rishuni (Temperance).

(A) 24 (Intellectual workers). 32 (war veterans). 34 (Maritime labourers).
(B) 128. 136, para 1 (No discrimination on grounds of religion).
(C) 91, para 1. 96, para 1 (no discrimination on grounds of religion).
(D) Australia; 116 (No religious qualifications). India: 275 & 298. Albania: 204 (limitations on employment of foreigners).
(E) Art. XIX (1919) (Right of women to vote). Art. XV 1870) (No denial of franchise on grounds of race, colour or previous condition of servitude).
(F) Art. 125 (Freedom and secrecy of elections). Art. 160 (Right of labourers to leisure to exercise civic rights).
(G) Art. 111-1 (Taxation only in accordance with law).
(H) Art. 17 (Rights of election, recall, initiative and referendum).

	United States	Switzerland Article	Weimar Germany Article	Czechoslovakia Article	Jugoslavia Article	Danzig Article	Soviet Russia Article	Ireland Section	China Article	Other countries Section
IX. Religion.										
1. State Church: Endowments.	Art. I (1791).	...	137, para 1.	...	...	...	124	44(1). 44(2)2°.	...	Australia: 116.
2. State recognition of religious customs.	...	53, para 2 (Right to decent burial).	139 (observance of Sabbath day).	...	...	100 (observance of Sabbath day).	...	...	...	...
3. Freedom of conscience.	Art. I (1791).	49, para 1. 50.	135. 136 para 1.	121 & 122. 125.	12, para 1.	96, paras 1 & 2.	124	44(2)1.°	13	Australia: 116.
4. Freedom from compulsion to participate from any religious practice.	...	49, para 2.	136, para 4.	123	12, para 4.	96 paras 3, to 6.	...	...	...	Australia: 116.
5. Religious bodies: rights and duties.	...	50 to 52. 58, para 2.	124, 137, 138 and 141.	130	12, paras 3, 5 & 7.	85, 97 to 99.	....	40(6)2°.	...	...
6. Taxation for religious purposes.	...	49, para 6.	137, para .	...	.2, para 6.	9	...	...	...	...
7. Religion and civil and political rights.	...	49, paras 4 & 5.	136, paras 1 & 2.	128, paras 1, 2 & 4.	12, para 2.	96, para 1.	...	44(2) 3°.	...	(A)
8. Religion and Education.						See Section on Education				
9. Other provisions.	...	...	(B)	(C)	...	(D)	...	...	...	(E)

X. Language and Education.										
1. National language and linguistic rights of minorities.	...	116	...	...	2	...	40. 110.	8. 25(4)5°.	...	Canada : 133. South Africa : 137.
2. Educational ideals.	...	...	142 & 148.	118 & 119.	16, para 1.	101&108.	...	...	158	...
3. Educational system and organisation.	...	...	143 to 149.	120	16&22.	102 to 108.	...	...	160 to 167.	...
4. Education of the poor.	...	...	146, para 1&3.	...	16, para 9. 22	104, paras 2, 3 & 4.	...	42(5).	161	...
5. Right to Education : guarantee of a minimum standard of education.	...	...	145	...	16, para 6.	81. 103.	121	42(3)2° & (4).	21. 160 (Adult education)	...
6. Private schools.	...	...	147	120	...	104&105.	...	42(4).	162	(F)
7. Rights of parents re : education of their children.	...	49, para 3.	146, para 2. 149, para 2.	...	...	104&106.	...	42	...	...
8. Safeguards for teachers.	...	...	143	...	...	95	...	...	165	...

(A) Australia: 116 (No religious qualification for public employment). Bulgaria : 41.
(B) 140 (Grant of time to army men for religious observances).
(C) 124 (equality of all religions before law).
(D) 84 (No notification for religious processions).
(E) Brazil: 122(V) (cemeteries to be secular). Costa Rica: 36 (limitations on freedom of expression and clergymen).
(F) Albania: 207 (Schools by foreigners and religious communities).

	United States	Switzerland Article	Weimar Germany Article	Czechoslovakia Article	Jugoslavia Article	Danzig Article	Soviet Russia Article	Ireland Section	China Article	Other countries Section
9. Religious instruction	..	49, para 3.	149	...	16, para 7.	106	124 (Separation of school from church).	...	...	...
10. Educational safeguards to religious and linguistic minorities.	..	49, para 3.	113. 146, para 2. 147, para 2.	130 to 133.	16, para 12&13.	4, para 2. 104, para 1. 106&107.	...	42. 44 (2) 4.	...	Canada 93.
11. Protection of historical monuments, art treasures, etc.	...	...	150	...	...	109	...	...	166	...
XI. Duties of citizenship.										
1. Payment of taxes.	...	...	134	...	...	88	...	...	19	(A)
2. Obedience to laws and protection of constitution.	...	49, para 5.	...	...	21	87	130	9(2).	...	...
3. Receiving of education.	...	...	...	...	...	81	...	...	21	...
4. Military service and defence of state.	...	18, para 1.	...	127	...	...	132&133.	..	20	...

5. Performance public duties.	...	...	132&133.	...	...	89&90.	130	...	...	...
6. Other duties.	...	...	(B)	...	...	...	(C)	9(2) (Loyalty to State).	...	...
XII. Unenumerated Rights and Duties.	Art. IX & X (1791).	...	...	...	...	...	...	...	22	Portug 1: 8(20)-1
XIII. Enforcement of Fundamental Rights.										
1. Supremacy of constitution and guarantee of fundamental rights.	Art.VI(2) (1787).	5	...	1, para 2.	...	71	...	15(4). 40(3) 1°.	...	...
2. Conditions for abrogation of fundamental rights.	Art. I Section 9 (2) (1787). Art. V (1791).	66	Article 48, para 2, 3, 4 & 5.	113,para 3.	...	...	...	40(4)3°.	23	...
3. Denial of certain rights to army men.	Art. V (1791).	...	133, para 2.	...	...	...	...	...	...	...
4. Institutions with authority to interpret and enforce fundamental rights.	Art. III Section 2(1), (1787).	113(3).	19	...	...	...	...	26, 34(3).	...	...

(*) Bulgaria: 41 (No evasion on grounds of religious convictions).

( ) 163, para 1 (Duty to work). 153, para 3 (Property to be used for common good). 155, para 3 (Full utilization of land).

(C) (12 Duty to work). 131 (Duty of protecting socialist property).

SAFEGUARDS FOR MINORITIES (III)

INTRODUCTION

" Safeguards for Minorities " has already been the subject of two earlier chapters in the " Constitutional Precedents, First Series". In the present chapter, an attempt is made to put together for convenience of reference provisions in various constitutions safeguarding the rights of minorities. These provisions have been classified under eleven different heads *viz.*, freedom of conscience, rights to religious instruction, equality of races, rights to language, rights to education, rights to autonomous institutions, political rights, rights to public employment, rights to trade and commerce, miscellaneous rights and enforcement of minorities rights.

The dividing line between what are called " Fundamental Rights" and provisions safeguarding the rights of minorities in most constitutions is often very thin, and many of the provisions included in our chapters on Fundamental Rights also find a place here.

A chart giving cross-references to the safeguards dealt with in these chapters is appended at the end.

SAFEGUARDS FOR MINORITIES (III)

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CHAPTER I

FREEDOM OF CONSCIENCE

UNION OF SOVIET SOCIALIST REPUBLICS

124. In order to ensure to citizens freedom of conscience, the Church in the U.S.S.R. is separated from the State, and the School from the Church. Freedom of religious worship and freedom of anti-religious propaganda is recognised for all citizens.

UNITED STATES OF AMERICA

Amendment 1. Congress shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof; .....

SWITZERLAND

49. Liberty of conscience and belief is inviolable.

GERMANY

135. All inhabitants of the Reich shall enjoy complete liberty of belief and conscience.....

YUGOSLAVIA

11. Freedom of religion and conscience is guaranteed.

TURKEY

70. .....freedom of conscience, of thought,.....are among the natural rights of Turks.

75. No one may be molested on account of his religion, his ritual, or his philosophic convictions. All religious observances shall be free on condition that they do not disturb the public peace, or shock public decency or exist in violation of social conventions or the laws (as amended 5 February 1937).

CZECHOSLOVAKIA

121. Liberty of conscience and religious creed is guaranteed.

POLAND

111. Freedom of conscience and of religion is guaranteed to all citizens. No citizen may suffer a limitation of the rights enjoyed by other citizens, by reason of his religion and religious convictions.

All inhabitants of the Polish State have the right of freely professing their religion in public as well as in private, and of performing the commands of their religion or rite, in so far as this is not contrary to public order or public morality.

112. Religious freedom may not be used in a way contrary to statutes. No one may evade the performance of public duties by reason of his religious beliefs. No one may be compelled to take part in religious activities or rites unless he is subject to parental or guardians' authority.

AUSTRIA

27. (1) All inhabitants of Austria who are capable of professing a religion enjoy complete freedom of religious conviction and liberty of conscience and also freedom of worship in their own homes or in public, in so far as this is not incompatible with public order or morals.

BELGIUM

14. Religious liberty and the freedom of public worship, as well as free expression of opinion in all matters, are guaranteed with the reservation of power to suppress offences committed in the use of these liberties.

DANZIG

95. Full freedom of creed and conscience shall be established.....

ESTONIA

11. In Estonia there is freedom of religion and conscience.

LITHUANIA

14. The citizen enjoys freedom of conscience and religion.

Adherence to any faith or confession of belief cannot be the ground for justifying crime or abstaining from public obligations.

LIECHTENSTEIN

37. Religious liberty and freedom of conscience are guaranteed to all persons.

AUSTRALIA

116. The Commonwealth shall not make any law for establishing any religion, or for imposing any religious observance, or for prohibiting the free exercise of any religion,.....

INDIA

11. The functions of the Governor-General with respect to..... ecclesiastical affairs.....shall be exercised by him in his discretion.. .....

CHAPTER II.

RIGHTS TO RELIGIOUS INSTRUCTION

GERMANY

141. So far as there is need for divine worship and spiritual ministration in the army, hospitals, penal establishments, or other public institutions, religious associations shall be admitted for the performance of religious offices without the exercise of any compulsion.

149. Religious instruction shall be part of the regular school curriculum with the exception of non-section (secular) schools. Such instruction shall be regulated by the School laws. Religious instructions shall be given in harmony with the fundamental principles of the religious association concerned without prejudice to the right of supervision by the State (Staat).

Teachers shall give religious instruction and conduct church ceremonies only upon a declaration of their willingness to do so ; participation in religious instruction and in church celebrations and acts depend upon a declaration of willingness by those who control the religious education of the child.

Theological faculties in institutions of higher learning shall be maintained.

CZECHOSLOVAKIA

120. (1) Private establishments for instruction and education are permitted to be set up only within the limits of the law.

(2) The supreme authority and control over all instruction and education shall be in the hands of the State.

POLAND

102. ... .The State has the duty of making accessible all moral guidance and religious consolation to citizens under its immediate care in public institutions, such as, educational institutions, barracks, hospitals, prisons, and charitable homes.

120. Instruction in religion is compulsory for all pupils in every educational institution, the curriculum of which includes instruction of youth under eighteen years of age, if the institution is maintained wholly or in part by the State, or by self-government bodies. The direction and supervision of religious instruction in schools belongs to the respective religious communities, reserving to the State educational authorities the right of supreme supervision.

BELGIUM

17. Private instruction shall not be restricted ; all measures interfering with it are forbidden ; the repression of offences shall be regulated by law.

DANZIG

98. In so far as the need arises for religious services and ministrations in infirmaries, prisons, and other public institutions, the religious associations shall be allowed to perform ceremonial acts, but all compulsion shall be excluded therefrom.

105. Religious instruction is a recognized school subject. It shall be given in accordance with the principles laid down by the religious associations without prejudice to the States' right of supervision.

The giving of religious instruction and the practice of religious observances shall be subject to the teachers' expressed willingness to undertake such duties; the right to withdraw a child from religious instruction; celebrations, or acts shall be granted in accordance with the express wishes of the person authorised to decide as to the child's religious upbringing.

106. In the course of instruction in the State schools care shall be taken not to offend the susceptibilities of those of a different way of thinking.

LITHUANIA

81. Religious teaching in schools is compulsory, with the exception of schools established for children whose parents belong to no religious organization. Religion must be taught in accordance with the demands of the religious organization to which the pupil belongs.

88. Soldiers must be granted leisure to perform their religious duties.

Persons kept in hospitals, prisons and other public institutions must be given the opportunity to perform their religious duties.

CHAPTER III

EQUALITY OF RACES

UNION OF SOVIET SOCIALIST REPUBLICS

123. Equality of rights of citizens of the U.S.S.R. irrespective of their nationality or race, in all spheres of economic, state, cultural, social and political life, is an indefeasible law.

Any direct or indirect restriction of the rights of, or, conversely, any establishment of direct or indirect privileges, for, citizens, on account of their race, or nationality, as well as any advocacy of racial or national exclusiveness or hatred and contempt, is punishable by law.

YUGOSLAVIA

4. There is but one single nationality in the whole kingdom. All citizens are equal before the law. All enjoy equal protection from the authorities.

TURKEY

88. The name Turk, as a political term, shall be understood to include all citizens of the Turkish Republic, without distinction of, or reference to race or religion.

CZECHOSLOVAKIA

106. (2) All persons residing in the Czechoslovak Republic shall enjoy within its territory in equal measure with the citizens of this Republic complete and absolute security of life and liberty without regard to origin, nationality, language, race, or religion. Exceptions to this principle may be made only so far as is compatible with international law.

134. Every manner whatsoever of forcible denationalization is prohibited. Non-observance of this principle may be proclaimed by law to be a punishable act.

BELGIUM

6. There shall be no distinction of classes in the State. All Belgians are equal before the law; they alone are admissible to civil and military offices, with such exceptions as may be established by law for particular cases.

BULGARIA

57. All Bulgarian subjects are equal before the law. Class distinctions shall not be recognized in Bulgaria.

HUNGARY

1. All Hungarian citizens have completely equal rights.

ESTONIA

6. All Esthonian citizens are equal in the eyes of law. There cannot be any public privileges or prejudices derived from birth, religion, sex, rank or nationality. In Esthonia there are no legal class divisions or titles.

INDIA

298. Persons not to be subject to disability by reason of race, religion, etc.

CHAPTER IV

RIGHTS TO LANGUAGE

UNION OF SOVIET SOCIALIST REPUBLICS

40. Laws passed by the Supreme Soviet of the U.S.S.R. are published in the languages of the Union Republics over the signatures of the President and Secretary of the Presidium of the Supreme Soviet of the U.S.S.R.

GERMANY

113. The foreign language parts of the population of the Reich may not be interfered with by legislative or administrative action in their free racial development specially in the use of their mother tongue in education as well as in the local administration and the administration of justice.

CZECHOSLOVAKIA

128. (*3*) Citizens of the Czechoslovak Republic may, within the limits of the common law, freely use any language they choose in private and business intercourse, in all matters pertaining to religion, in the press and in all publications whatsoever, or in public assemblies.

(*4*) This, however, does not affect the rights conferred on the State organs in these matters by laws already in force or to be passed in the future, with a view to public order, the security of the State, or effective control.

131. In towns and districts in which there lives a considerable fraction of Czechoslovak citizens speaking a language other than Czechoslovak, the children of such Czechoslovak citizens shall, in public instruction and within the bounds of the general regulations relating thereto, be guaranteed a due opportunity to receive instruction in their own tongue. The Czechoslovak language may at the same time be prescribed as a compulsory subject of instruction.

The Czechoslovakian Law for the Protection of the Languages of Minorities in Czechoslovakia (1920)

Article 1.—The Czechoslovak language shall be the State official language of the Republic.

It is, thus, in particular the language :—

(*1*) In which the work of all the courts, offices, institutions, undertakings and organs of the Republic shall be conducted, in which they shall issue their proclamations and notices as well as their inscriptions and designations. Exceptions to this section are laid down in Article 2 and Article 5 as well as in Article 6 relating to Russinia.

(*2*) In which the principal text on State and other bank notes shall be printed.

(*3*) Which the armed forces of the country shall use for the purpose of command and as the language of the service ; in dealings with men and companies not knowing this language their mother tongue may also be used.

Detailed regulations will be issued as to the duty of State officials and employees, as well as officials and employees of State institutions and undertakings to know the Czechoslovak language.

Article 2.—In respect of national and language minorities the following rules shall apply :—

" It shall be the duty of courts, offices and organs of the Republic whose competence relates to a jurisdictional district in which, according to the latest census, at least 20 per cent. of the citizens speak the same language—and that a language other than Czechoslovak—to accept (in all matters which they have to settle on the ground of their competence applying to such a district) from any member of this minority any complaints in this lauguage, and to deal with the complaints not only in the Czechoslovak language but also in that in which the complaint itself is presented. Where there are several district courts in one community, that whole community shall be deemed to be a single jurisdictional district.

" It shall be laid down by regulations to what extent and for what courts and offices it will be possible to restrict the settlement of cases to the language of the parties themselves. These courts and offices are those whose competence is limited to one district, namely a district with such a national minority, as well as courts and offices immediately subordinate to them.

" Under similar conditions, it is the duty of the public prosecutor to frame the charges against an accused speaking another tongue in this language, to, or even in this language alone. The executive authority shall determine n such cases what language shall be used.

" If the party to any matter is not the initiator of the proceedings, he shall (if the other conditions of Article 2 are fulfilled) be entitled on the same principles to have his case dealt with also in his own language, or even in its alone so far as it is known or otherwise at his request.

" In districts where there lives a national minority in the terms of Article 2 the language of the national minority shall be used concurrently with the Czechoslovak language in proclamations and notices issued by the State courts, offices and organs and for their inscriptions and designations ".

Article 3.—It is the duty of autonomous offices, representative council and all public corporations in the State whatsoever to accept and to deal with oral or written matter in the Czechoslovak language.

It shall always be possible to make use of this language in meetings and conferences: proposals and suggestions put forward in this language be dealt with.

The State executive authority shall determine upon the language to be used for public proclamations and notices and for the inscriptions and designations for which the autonomous offices are responsible.

It is the duty of the autonomous offices, representative councils and public corporations to accept—under the conditions of Article 2—all matters presented to them in a language other than Czechoslovak and to deal with the same and also to permit the use of another language in meetings and conferences.

Article 4. —The State Offices, using the State official language, shall, in their official proceedings in those parts of the Republic which before October 28, 1918, pertained to Kingdoms and Lands represented in the Imperial (Austro-Hungarian) Council or to the Kingdom of Russia, use regularly the Czech language in Slovakia.

Matters presented in the Czech language are officially dealt with in the language in which they were presented.

Article 5.- The instruction in all schools established for members of a national minority shall be given in their language. Likewise educational and cultural institution set up for them shall be administered in their language (Article 9, Treaty of St. Germain).

Article 6.— The Diet which shall be set up for Russinia shall have the right reserved to it for settling the language question for this territory in a manner consonant with the unity of the Czechoslovak State (Article 10, Treaty of St. Germain).

Until this settlement has been made this law shall apply, due regard however, being paid to the special circumstances of that territory in respect of language.

Article 7.—Disputes regarding the use of language in courts, offices, institutions, undertakings and organs of the State as well as in the autonomous offices and public corporations shall be settled by the competent organs of State control as matters of State administration detached from the causes of which they arose

POLAND

109. Every citizen has the right of preserving his nationality and developing his mother tongue and national characteristics.

Special statutes of the State will guarantee to minorities in the Polish State the full and free development of their national characteristics, with the assistance of autonomous minority unions, endowed with the character of public law organizations, within the limits of unions of general self-government.

The State will have, in regard to their activity, the right of control and of supplementing their financial means in case of need.

HUNGARY

The Hungarian Law for the Protection of minorities (1919).

2. " Subjects of the State belonging to racial minorities can freely make use of their native language in the Hungarian Parliament, in district and communal assemblies, as well as in their committees, wherever they have the right to make speeches.

3. " The laws and decrees of the Government are to be published in the languages of all the racial minorities ; the Magyar text is authoritative. District and communal regulations will be published in the administrative language of the communal area, and also in the language used there at the meetings of the administrative bodies.

4. " The administrative language of a district assembly is fixed by the district at a general meeting. Proceedings are to be reported in that language and also in those languages which at least one-fifth of the members of the departmental representative body desire to use. The administrative language is the authoritative one.

5. " The district assemblies can make useof their administrative language in all their requests and decisions, but if this language is not Magyar they are bound to subjoin a Magyar text.

6. " The administrative language of communal bodies is determined by their assembly.

7. " The communal bodies can use their administrative language on their requests and decisions.

8. " Subjects of the State belonging to racial minorties can use their native language in communicating with legislative bodies, the Government, the Ministries, district and communal administrative authorities as well as with the public services.

9. " The administrative bodies will issue their decision and replies in the same language as the applications, complaints and requests submitted to them, and in communicating with the communal bodies, societies, institutions, and private persons they will use the same language as the latter, provided it is the administrative language of the area.

10. " Whosoever requires the protection of the law and the assistance of the law courts, either as plaintiff, defendant or appellant, can use his native language, provided that it is the administrative language for the area within the jurisdiction of the court concerned.

11. " The law courts will issue their decisions in the same language as the application ; etc. The evidence of witnesses and other judicial procedure will be taken in the language of the witness or the parties interested with the same proviso as in paragraph 10. Under the same conditions, appeals will be made in the language of the appellant provided that the court is aware which language this is. All other judicial decisions including the verdict of the highest appeal court, will be given in the language of the interested parties at their request.

12. " Ecclesiastical administrative authorities, religious communities and parishes, can decide freely what is to be the official language of their church or the language of instruction in their schools and they can make use of it in their dealings with State and autonomous administrative bodies.

13. " Care must be taken that citizens of the State belonging to racial minorities and living in sufficiently considerable compact masses in the territory of the State may have facilities in the State educational establishments of the area where they reside for their children to be educated in their native language as far as the initial stages of higher education. In the universities special chairs will be established for the study of the languages and literatures: of each racial minority.

ESTONIA

12. Science, art, and the teaching of the same are free in Esthonia. Education is compulsory for children arrived at the school age, and is gratuitous in elementary schools. The minority nationalities are guaranteed education in their mother tongue. Education is carried out under the control of Government.

FINLAND

14. The right of Finnish citizens to use their mother tongue, whether Finnish or Swedish, before the courts and the administrative authorities, and to receive papers and decisions in such language, shall be guaranteed by law, care shall be taken that the rights of the Finnish population and the rights of the Swedish population of the country shall be protected in accordance with identical principles.

CANADA

Section 133.—Either the English or the French language may be used by any person in the debates of the Houses of the Parliament of Canada and of the Houses of the Legislature of Quebec ; and both those languages shall be used in the respective records and journals of those Houses ; and either of those languages may be used by any person or in any pleading or process in or issuing from any court of Canada established under this Act, and in or from all or any of the courts of Quebec.

The Acts of the Parliament of Canada and of the Legislature of Quebec shall be printed and published in both those languages.

Section 137.—Both the English and Dutch languages shall be official languages of the Union, and shall be treated on a footing of equality, and possess and enjoy equal freedom, rights, and privileges; all records, journals, and proceedings, of Parliament shall be kept in both languages, and all bills, Acts, and notices of general public importance or interest issued by the Government of the Union shall be in both languages.

CHAPTER V
RIGHTS TO E DUCATION

UNION OF SOVIET SOCIALIST REPUBLICS

121. Citizens of the U.S.S.R. have the right to education.

This right is ensured by universal,compulsory elementary education. by education, including higher education, being free of charge; by the system of state stipends for the overwhelming majority of students in the universities and colleges ; by instruction in schools being conducted in the native language, and by the organisation in the factories, state farms, machine and tractor stations and collective farms of free vocational, technical and agronomic training for the working people.

GERMANY

146. The public schools system shall be organised according to a general plan. The intermediate and higher school system shall be developed on the basis of an elementary school common to all. This development shall be governed by the varying requirements of vocations ; and the admission of a child to a particular school shall be governed by his ability and aptitude and not by the economic and social position or the religious belief of his parents.

Nevertheless, within the municipalities, upon the request of those persons having the right to education, elementary schools of their own religious belief or of their Weltanschauung shall be established, provided that an organised school system in the sense of paragraph 1 is not thereby interfered with. The wishes of these persons having the right to education shall be considered so far as possible. Detailed regulations shall be prescribed by State legislation on the basis of a national law.

To enable those in poor circumstances to attend secondary and higher schools, the Reich, the States, and the municipalities shall provide public funds especially ducational allowances for the parents of children who are considered qualified for further education in intermediate and higher schools until the completion of such education.

147. Private elementary schools shall be established only if. for a minority of those persons having a right to education whose wishes must be taken into consideration according to article 146 paragraph 2, there is in the municipality no public elementary school of their religious belief or of their Weltanschuung or if the educational administration recognizes a special pedagogical interest.

Private preparatory schools are abolished.

The existing laws shall continue in force for private schools which do not serve as substitutes for public schools.

CZECHOSLOVAKIA

120. (*1*) Private establishments for instruction and education are permitted to be set up only within the limits of the law.

(2) The supreme authority and control over all instruction and education shall be in the hands of the State.

AUSTRIA

3. (6) Without prejudice to the rights granted to it by article 30, the State has the right to exercise superior direction and supervision over all scholastic establishments and all religious institutions and institutions for national education and training. It is the particular duty of the State to see that children receive religious and moral training and are given the scientific instruction requisite to enable them to become capable men and good citizens.

LITHUANIA

83. Private religious schools, if they carry out the minimum programme laid down by the laws, receive from the State Treasury the portion of the budget appropriated for the needs of education, which corresponds to the number of Lithuanian citizens and pupils officially belonging to that religious organisation whose schools are conducted according to the teachings of that organisation.

IRELAND

42. (3) The state shall not oblige parents in violation of their conscience and lawful preference to send their children to schools established by the State or to any particular type of school designated by the State.

CANADA

93. Legislation respecting Education. In and for each Province the Legislature may exclusively make Laws in relation to Education, subject and according to the following Provisions.

(1) Nothing in such Law shall prejudicially affect any Right or Privilege with respect to Denominational Schools which any class of persons have by law in the province at the Union.

(2) All the Powers, Privileges, and Duties at the Union by Law conferred and imposed in Upper Canada on the separate schools and school Trustees of the Queen's Roman Catholic Subjects shall be and the same are hereby extended to the Dissentient Schools of the Queen's Protestant and Roman Catholic Subjects in Quebec.

(3) Where in any Province a System of separate or Dissentient schools exists by Law at the Union or is thereafter established by the Legislature of the Province, an appeal shall be to the Governor General in Council from any Act or Decision of any Provincial Authority affecting any Right or Privilege of the Protestant or Roman Catholic Minority of the Queen's Subjects in relation to Education.

(4) In case any such provincial Law as from time to time seems to the Governor General in Council requisite for the due Execution of the Provisions of this section is not made, or in any case Decision of the Governor—General in Council on any Appeal under this Section is not duly executed by the proper Provincial Authority in that Behalf, then and in every such Case, and as far only as the circumstances of each case require, the Parliament of Canada may make remedial laws for the due execution of the Provisions of this Section and of any Decision of the Governor General in Council under this Section.

INDIA

83. Provisions with respect to certain educational grants—

(1) If in the last complete financial year before the commencement of this Part of this Act a grant for the benefit of the Anglo-Indian and European Communities or either of them was included in the grants made in any Province for education then in each subsequent financial year not being a year in which the Provincial Legislative Assembly otherwise resolve by a majority which includes at least three fourths of the members of the Assembly, a grant shall be made for the benefit of the said community or communities not less in amount that the average of the grants made for its or their benefit in the ten financial years ending on the thirty-first day of March, nineteen hundred andthirty-three ;

Provided that, if in any financial year the total grant for education in the province is less than the average of the total grants for education in the Province in the said ten financial years, then, whatever fraction the former may be of the latter, any grant made under this sub-section in that financial year for the benefit of the said community or communities need not exceed that fraction of the average of the grants made for its or their benefit in the said ten financial years.

In computing for the purposes of this sub-section the amount of any grants for capital purposes shall be included.

(2) The provisions of this section shall cease to have effect in a Province if at any time the Provincial Legislative Assembly resolve by majority which includes at least three-fourths of the members of the Assembly that those provisions shall cease to have effect.

CHAPTER VI

RIGHTS TO AUTONOMOUS INSTITUTION

GERMANY

138. The property and other rights of religious associations and religious unions in their cultural, educational, and social welfare institutions, foundation, and other funds shall be guaranteed.

CZECHOSLOVAKIA

130. In so far as citizens of the Czechoslovak Republic are entitled by the common law to establish, manage, and administer at their own cost philanthropic, religious, or social institutions, they are all equal, no matter what be their nationality, language, religion, or race, and may, in such institutions make use of their own language and worship according to their own religious ceremonies.

132. In towns and districts where there is living a considerable fraction of Czechoslovak citizens belonging to some minority, whether in respect of religion, or nationality, or language, and where specific sums of money from public funds as set out in the State budget or in the budget of local or other public authorities, are to be devoted to education, religion, or philanthropy, a due share in the use and enjoyment and such sums shall be secured to such minorities within the limits of the general regulations for public administration.

POLAND

110. Polish citizens belonging to national, religious, or linguistic minorities have the right as other citizens, of founding, supervising and administering at their own expense, charitable, religious, and social institutions, schools and other educational institutions, and of using freely therein their language, and observing the rules of their religion.

113. Every religious community recognised by the state has the right of organizing collective and public services, it may conduct independently its internal affairs, it may possess and acquire movable and immovable property, administer and dispose of it, it remains in possession and enjoyment of its endowments and funds, and of religious, educational, and charitable institutions. No religious community may, however, be in opposition to the statutes of the State.

DANZIG

97. The property and other rights of religious associations and religious unions shall be guaranteed them for the purpose of maintaining institutions, foundations, and other undertakings of religious, educational or charitable purposes.

ESTONIA

The Estonian Cultural Autonomy Law of February 5, 1925.

This law consists of thirty-one paragraphs, of which the first declares the autonomous institutions of the national minorities to derive their authority from the Estonian legislation as authorizes the establishment of local self-governing institutions. Like the latter, the minority institutions can act only in accordance with the law of the land.

Para. 2. The competence of the minority autonomous institutions includes :

(a) The organisation, administration and supervision of the public and private educational establishments of the minority in question.

(b) The case of the other cultural needs of the minority concerned and the administration of institutions and undertakings created to this end.

The self-administration of the welfare institutions of the minority is regulated by special law.

Para 3. The cultural autonomous administration is entitled to enact bye-laws, binding on its members, within the sphere defined in Para 2.

Para. 4. The public school organisation of the minority is determined jointly by the minority-administratio and the local authorities concerned, and confirmed by the Government on the motion of the Minister of Education, who also acts as umpire should the minority-administration and local authorities disagree. Existing public schools with the language of instructions of the minority come under the control of the minority authorities. When a minority school is opened, or taken over, the State decides what subsidies or other services shall be provided for it by the local authorities.

Para. 5. The organs of the national autonomy of each minority are its cultural Council and its Cultural Administration. Subordinate institutions with local competence may also be created.

Para. 6. The financial r sources of the autonomous institutions are drawn from the following sources :

(a) Payments and other services made by the State for public elementary and secondary schools.

(b) Similar payments, etc., made by the local authorities, as decreed by the State.

(c) Subsidies for cultural purposes from the State and autonomous authorities.

(d) Public taxes levied, if necessary, on its members by the National Council ; the rate and basis of such taxation to be authorized by the Government on the joint motion of the Ministeries of Finance and Education.

Para. 7. The local authorities are released from the obligation to provide instruction for the minority wherever the minority itself has assumed his duty.

Para. 8. Under 'Minority' within the meaning of this law is understood the German, Russian and Swedish minorities, and any other minority numbering not less than 3,000 persons.

Para 9. Membership of a minority is determined by a national register, on which Estonian Citizens of the above minorities may enter their names if at least 18 years of age. Children under 18 follow the nationality of the parents. If the parents are of different nationality, the nationality of the child is decided by agreement between them ; failing such agreement, the child follows the nationality of the father. A child reaching the age of 18 must register within a year if he wishes to belong to the minority.

Para. 10. The names of members are erased from the register (a) on death, (b) on loss of Estonian citizenship, (c) on their own request. In cases (b) and (c) they must fulfil their financial obligations up to the end of the current year. Members leaving the register under (c) may apply for re-admission; but the autonomous authorities have the right to refuse the request.

Para. 11. Voting members of the minority are registered members of full age entitled to vote in communal elections.

Para. 12. Membership of the minority does not except any person from his obligations as a citizen or from his local obligations.

Para. 13. If, for unavoidable reasons, members of a minority make use of State or local institutions when they possess such institutions of their own, subsidized out of public funds, the minority autonomous institutions must defray the cost.

Para. 14. The Government may dissolve the Cultrual Council, when a new Council must be elected within three months.

Para. 15. The minority institutions are dissolved :

(a) if the Cultural Council so decides, by a two-thirds majority, or

(b) if the membership of the minority sinks below 3,000, or if the registered adult membership falls to below 90 per cent. of the total of the minority as shown by the last census.

Para. 16. Minorities wishing to set up autonomous institutions inform the Government to that effect.

Para. 17. If regulates the elections to the first Cultural Council, laying down a procedure analogous to that of the complation of ordinary voting lists. If less than 50 per cent. of the persons registered as voters take part in the election, no Council is elected and no further application can be entertained for three years. If a sufficient number of voters take part in the election, the President of the Committee appointed for the purpose (designated by the minority and confirmed by the Government) arranges for the election

of the Cultural Council, which again has to decide whether it wishes to exercise the autonomy envisaged. If it does so decide by a two-thirds majority- the State declares the autonomy to be in force, and must take all the necess ary administrative steps within four months. If this majority is not obtained, the Council is dissolved, and no further application may be made for three years. The costs of the election are borne by the minority.

Para 31. In regions where a minority is in a local majority, the State may establish a local national, cultural self-government for its subjects who are Estonnians by nationality.

The explanatory statement which accompanies this law is in many respects, more interesting, and indeed more illuminating, than the law itself. In a preamble it points out how other States, notably Russia, had failed to solve the problem of the co-existence of various nationalities within its frontiers. If the principle of the equality of rights of all citizens is to be effective, then every member of a minority in a State must have the same possiblities of national-cultural development as the majority. And clearly each people knows its own cultural needs best.

The law is then analysed and commented on. The national autonomous institutions possess legal personality, as institutions fulfilling public functions. The Government is a supervisory rather than a superior authority, except in so far as it has the power to dissolve the Cultural Council. The national institutions enjoy, however, complete freedom of action within their own sphere of competence. They are completely free in the choice of their organs and the election of their officials, and are treated like other State institutions in respect of stamp duty, etc.

The autonomous institutions control both the public and the private schools of their members. Their school Councils have the same status *vis-a-vis* the Ministry of Education as the local school Councils of the local authorities. They have, however, no authority over any schools giving instruction in the minority language but established for the benefit of persons other than members of the minority. They deal not only with schools but with other cultural institutions.

The organs are : the Cultural Council and the Cultural Administration. As the general principle is personal, the Cultural Council represents all members of the minority, wherever domiciled, but its members are elected on a local basis, and subordinate Councils may be created to deal with local problems.

Entry on the register is a matter for the free decision of the individual ; but to prevent abuses the consent of the autonomous authorities is required if persons who have voluntarily left the organization wish to re-register.

The State has the right and duty to supervise the activities of the institutions, and is therefore empowered, if necessary, to dissolve the Council and order new elections. The minority may itself close down its own functions.

The remainder of the explanatory statement elucidates the final provisions of the law relating to the system of election.

LITHUANIA

84. The State equally recognizes the right of all religious organizations existing in Lithuania.—to establish and administer the houses and schools of their belief and institutions of education and charity.

LIECHTENSTEIN

38. The right of ownership, and all other proprietary rights of ecclesiastical communities and religious associations, in respect of their institutions, foundations and other possessions devoted to worship, education and benevolent objects, are guaranteed. The administration of Church property in the ecclesiastical parishes shall be regulated by a special law ; the assent of the Church authorities shall be sought before the said law is promulgated.

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CHAPTER VII

POLITICAL RIGHTS

UNION OF SOVIET SOCIALIST REPUBLICS

123. Equality of rights of citizens of the U.S.S.R. irrespective of their nationality or race, in all spheres of ——and political life, is an indefeasible law.

UNITED STATES OF AMERICA

Amendment 1. Congress shall make no law abridging the freedom of speech, or of the press ; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment XV.

Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, colour or previous condition of servitude.

SWITZERLAND

49.....

The exercise of civic or political rights may not be limited by ecclesiastical or religious requirements or conditions of any kind whatsoever.

GERMANY

136. Civil and political rights and duties shall be neither conditioned upon, nor restricted by, the exercise of religious freedom.

The enjoyment of civil and political rights shall be independent of religious belief.

YUGOSLAVIA

11.....

The enjoyment of civil and political rights is independent of the exercise of religion. No one can claim exception from civil and military obligations and duties by reason of the prescriptions of his religion.

13. Citizens have the right to form associations, and to hold meetings and consult together within the limits of the law. Associations for political party purposes or for purposes of physical culture may not be formed on a denominational, racial or religious basis.

No one may attend meetings armed.

FINLAND

9. Profession of religion or the fact of belonging to no religion shall have no influence upon the rights and duties of Finnish citizens.

14.....care shall be taken that the rights of the Finnish population and the right of the Swedish population of the country shall be protected in accordance with identical principles.

LIECHTENSTEIN

39. The enjoyment of civil and political rights shall not be dependent on religious belief; nor may the latter constitute a ground for any dereliction of civil obligations.

SOUTH AFRICA

35. (1) Parliament may by law prescribe the qualifications which shall be necessary to entitle persons to vote at the election of members of the House of Assembly, but no such law shall disqualify any person (other than a native, as defined in section 1 of "The Representation of Natives Act, 1936") in the Province of the Cape of Good Hope who, under the laws existing in the Colony of the Cape of Good Hope at the establishment of the Union, is or may become capable of being registered as a voter from being so registered in the Province of the Cape of Good Hope by reason of his race or colour only, or disqualify any native, as so defined, who under the said Act would be or might become capable of being registered in the Cape native voters' roll instituted under that Act from being so registered, or alter the number of the members of the House of Assembly who in terms of the said Act may be elected by the persons registered in the said roll, unless the bill embodying such disqualification or alteration be passed by both Houses of Parliament sitting together, and at the third reading be agreed to by not less than two-thirds of the total number of members of both Houses. A Bill so passed at such joint sitting shall be taken to have been duly passed by both Houses of Parliament.

(2) No person (other than a native as so defined) who at the passing of any such law is registered as a voter in any Province shall be removed from the register by reason only of any disqualification based on race or colour

CHAPTER VIII

RIGHT TO PUBLIC EMPLOYMENT

UNION OF SOVIET SOCIALIST REPUBLICS

Article 12. In the U.S.S.R. work is a duty and a matter of honour for every able-bodied citizen, in accordance with the principle: "He who does not work, neither shall he eat."

The principle applied in the U.S.S.R. is that of socialism; "From each according to his ability, to each according to his work."

Article 118. Citizens of the U.S.S.R. have the right to work, that is, are guaranteed the right to employment and payment for their work in accordance with its quantity and quality.

The right to work is ensured by the Socialist organisation of the national economy, the study growth of the productive forces of Soviet Society, the elimination of the possibility of economic crises, and the abolition of unemployment.

Article 119. Citizens of the U.S.S.R. have the right to rest and leisure.

The right to rest and leisure is ensured by the reduction of the working day to seven hours for the overwhelming majority of the workers, the institutions of annual vacations with full pay for workers and employees and the provisions of wide network of sanatoria, rest homes and clubs for the accommodation of the working people.

Article 120. Citizens of the U.S.S.R. have the right to maintenance in old age and also in case of sickness or loss of capacity to work.

This right is ensured by the extensive development of social insurance of workers and employees at state expense, free medical service for the working people and the provision of a wide network of health resort for the use of the working people.

GERMANY

136. .....

The enjoyment of civil and political rights as well as eligibility to public office shall be independent of religious belief.

CZECHOSLOVAKIA

128. (2) Difference in religion, belief, confession, or language shall within the limits of the common law constitute no obstacle to any citizen of the Czechslovak Republic particularly in regard of entry into the public services an doffices, of attainment to any promotion or dignity,.....

AUSTRIA

27. (2) The profession of a religious faith shall not authorize any infraction of civic duties. No discrimination on the ground of religious belief shall be made as regards the enjoyment of civic and national rights or the appointment to public offices, employment and dignities. Exceptions to the above principles may be made by special laws in the case of teachers.

HUNGARY

THE HUNGARIAN LAW FOR THE PROTECTION OF MINORITIES (1919).

15. " The fact of belonging to any racial minority will not be an obstacle in the way of attaining rank or employment, hatever they may be. The Government binds itself to see that judicial and administrative posts especially those of sub-prefects are filled, wherever possbile, by persons belonging to racial minorities and knowing their languages. Officials now in office are obliged to take the necessary steps so as to be able within a period of two years to satisfy the linguistic requirements of racial minorities inhabiting the area in which they are carrying out their duties.

BELGIUM

6. .....

All Belgians are equal before the law; they alone are admissible to civil and military offices, with such exceptions as may be established by law for particular cases.

DANZIG

95. .....

Enjoyment of civil and national rights and eligibility for public offices shall be independent of creed.

FINLAND

9. Profession of religion or the fact of belonging to no religion shall have no influence upon the rights and duties of Finnish citizens. In respect to public offices, legal restrictions which are not in conflict herewith shall remain in force until otherwise provided by law.

INDIA

298. .....

(1) No subjects of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of them be ineligible for office under the Crown in India,.....

CHAPTER IX

RIGHTS TO TRADE AND COMMERCE

CZECHOSLOVAKIA

128. (2) Difference in religion, belief, confession, or language shall within the limits of the common law constitute no obstacle to any citizen of the Czechoslovak Republic particularly.....in regard to the exercise of any trade or calling.

INDIA

298. ... ...

(1) No subject of His Majesty domiciled in India shall on grounds only of religion, place of birth, descent, colour or any of these.....be prohibited on any such grounds from acquiring, holding or disposing of property or carrying on any occupation, trade, business or profession in British India.

CHAPTER X

MISCELLANEOUS RIGHTS

SWITZERLAND

49. .....

No person may secure exception, on the ground of religious opinion, from the fulfilment of any civic obligation.

53. .....

The control of burial places is vested in the civil authorities, which must provide that every deceased person may receive decent burial.

54. The right to marry is placed under the protection of the Confederation.

No impediment to marriage may be based upon grounds of religious belief, the poverty of either party, their conduct or any other consideration whatever of a police nature.

.....

Children born before marriage are legitimized by the subsequent marriage of their parents.

YUGOSLAVIA

16. All schools must impart a moral education and develop the civic conscience in the spirit of national unity and religious tolerance.

All educational institutions are placed under state control.

HUNGARY

2. Complete equality and reciprocity, without distinction of any kind are established for all religious denominations recognised by law in this country.

CZECHOSLOVAKIA

119. Public instruction shall be given so as not to be in conflict wiht the results of scientific investigation.

133. The method of carrying out the principles embodied in articles 131 and 132, and especially the interpretation to be assigned to the expression "considerable fraction", shall be determined by special enactment.

POLAND

95. The Republic of Poland guarantees on its territory, to all, without distinction of extraction, nationality, language, race, or religion, full protection of life, liberty, and property.

Foreigners enjoy, on conditions of reciprocity, rights equal to those of citizens of the Polish State, and have duties equal to those of such citizens, unless statutes expressly require Polish citizenship.

AUSTRIA

27. (3) No one shall be compelled to perform any religious right or take part in any religious ceremony. This rule shall not apply to obligations imposed by family authorities, education authorities or other lawfully constituted authorities. Further, it shall not apply to obligations concerning attendance at religious ceremonies arising out of the duties of a public office.

BULGARIA

41. No one shall be entitled, on the ground of his religious convictions, to evade compliance with existing laws which are generally binding on all.

DANZIG

99. Sunday and the public holidays recognised by the State shall be protected by law as days of rest and spiritual edification.

FINLAND

14. .....

The State shall provide for the intellectual and economic needs of the Finnish and Swedish populations in accordance with identical principles.

LITHUANIA

87. The laws observe Sunday and other holidays recognised by the State.

INDIA

11. Provisions as to defence, ecclesiastical affairs, external affairs, and the tribal areas.

(1) The functions of the Governor-General with respect to defence and ecclesiastical affairs and with respect to external affairs, except, the relations between the Federation and any part of His Majesty's dominions, shall be exercised by him in his discretion, and his functions in or in relation to the tribal areas shall be similarly exercised.

(2) To assist him in the exercise of these functions the Governor-General may appoint Councellors, not exceeding three in number, whose salaries and conditions of service shall be such as may be prescribed by His Majesty in Council.

12 (c) the safeguarding of the legitimate interests of minorities;

(2) If and in so far as any special responsibility of the Governor-General is involved, he shall in the exercise of his functions exercise his individual judgment as the action to be taken.

52. Special responsibilities of Governor :—

(*b*) the safeguarding of the legitimate interests of minorities.

298. (2) Nothing in this section shall affect the operation of any law which:

(*a*) prohibits, either absolutely or subject to exceptions, dispositions of agricultural land situated in any particular area and owned by a person belonging to some class recognised by the law as being a class of person engaged in or connected with agriculture in that area or as being an aboriginal tribe, in favour or for the benefit of any person not belonging to that class.

(*b*) recognises the existence of right, privilege or disability attaching to members of a community by virtue of some personal law or custom having the force of law.

(3) Nothing in this section shall be construed as derogating from the special responsibility of the Governor-General or of a Governor for the safeguarding of the legitimate interests of minorities.

CHAPTER XI

THE ENFORCEMENT OF MINORITIES RIGHTS

UNITED STATES OF AMERICA

AMENDMENT XV.

Section 2. The Congress shall have power to enforce this article by appropriate legislation.

HUNGARY

THE HUNGARIAN LAW FOR THE PROTECTION OF MINORITIES (1919).

16. "The competent Ministerial authorities are entrusted with carrying out the present decree in co-operation with the Minister of racial minorities, who will keep a continual check on the manner in which this is done, and who will organize for this purpose a special section for each of the racial minorities.

CZECHOSLOVAKIA

THE CZECHOSLOVAKIAN LAWN FOR THE PROTECTIOM OF THE LANGUAGES OF MINORITIES IN CZECHOSLOVAKIA (1920)

Article 8. Details as to the carrying out of this law shall be fixed by the State executive authority which will, in the spirit of this law, lay down rules regulating the use of languages for autonomous offices, representative bodies and public corporations, as well as for those offices and public organs whose competence extends to districts which are less jurisdictional districts, or for organs which have no district of their own.

The rules shall also prescribe what measures shall be taken towards facilitating the dealings of officials with persons who do not speak the language in which the court, office, or organ conducts its business in the sense of this law. They shall also prescribe measures to be taken to protect the different parties from legal damage which might accrue to them from ignorance of the language in question.

Exceptions to the terms of this Act necessary for securing undisturbed administration may also be made by regulation for the period of five years, commencing from the day on which this law comes into force.

Finally, rules shall be laid down which are essential for securing the successful carrying out of this law.

APPENDICES

I. POLISH MINORITIES TREATY, 28TH JUNE, 1918

The following provisions from the Treaty relating to the Protection of Minorities between the Allied and Associated Powers and Poland signed at Versailles, 28th June 1919 were the model for the minority provisons included in the treaties of peace with Austria, Hungary, Bulgaria, and Turkey, for the minority treaties concluded with Czechoslovakia, Yugoslavia, Rumania, and Greece, and for the declarations made by Albania, Lithuania and other states at the time of their admission to the League of Nations.

1. Poland undertakes that the stipulations contained in articles 2 to 8 of this Chapter shall be recognised as fundamental laws, and that no law, regulation or official action shall conflict or interfere with these stipulations, nor shall any law, regulation or official action prevail over them.

2. Poland undertakes to assure full and complete protection of life and liberty to all inhabitants of Poland without distinction of birth, nationality, language, race or religion.

All inhabitants of Poland shall be entitled to the free exercise, whether public or private, of any creed, religion or belief, whose practices are not inconsistent with public order or public morals.

7. All Polish nationals shall be equal before the law and shall enjoy the same civil and political rights without distinction as to race, language or religion.

Differences of religion, creed or confession shall not prejudice any Polish national in matters relating to the enjoyment of civil or political rights, as for instance admission to public employments, functions and honours, or the exercise of professions and industries.

No restriction shall be imposed on the free use by any Polish national of any language in private intercourse in commerce, in religion, in the press or in publications of any kind, or at public meetings.

Notwithstanding any establishment by the Polish Government of an official language, adequate facilities shall be given to Polish nationals of non-Polish speech. for the use of their language, either orally or in writing, before the courts.

8. Polish nationals who belong to racial, religious or linguistic minorities shall enjoy the same treatment and security in law and in fact as the other Polish nationalls In particular they shall have an equal right to establish, manage and control at their own expense charitable, religious and social institutions, schools and other educational establishments, with the right to use their own language and to exercise their religion freely therein.

9. Poland will provide in the public educational system in towns and districts in which a considerable proportion of Polish nationals of other than Polish speech are residents adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Polish nationals through the medium of their own language. This provision shall not prevent the Polish Government from making the teaching of the Polish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Polish nationals belonging to racial, religious or linguistic minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, municipal or other budget, for educational, religious or charitable purposes.

The provisions of this article shall apply to Polish citizens of German speech only in that part of Poland which was German territo 1 August 1947.

10. Educational Committees appointed locally by the Jewish communities of Poland will, subject to the general control of the State, provide for the distribution of the proportional share of public funds allocated to Jewish schools in accordance with article 9, and for the organisation and management of these schools.

The provisions of article 9 concerning the use of languages in schools shall apply to these schools.

11. Jews shall not be compelled to perform any act which constitutes a violation of their Sabbath, nor shall they be placed under any disability by reason of their refusal to attend courts of law or to perform any legal business on their Sabbath. This provision however shall not exempt Jews from such obligations as shall be imposed upon all other Polish citizens for the necessary purposes of military service, national defence or the preservation of public order.

Poland declares her intention to refrain from ordering or permitting elections, whether general or local, to be held on a Saturday, nor will registration for electoral or other purposes be compelled to be performed on a Saturday.

12. Poland agrees that the stipulations in the foregoing articles, so far as they affect persons belonging to racial, religious or linguistic minorities constitute obligations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of a majority of the Council of the League of Nations. The United States, The British Empire, France, Italy and Japan hereby agree not to withhold their assent from any modification in these articles which is in due form assented to by a majority of the Council of the League of Nations.

Poland agrees that any Member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or any danger of infraction, of any of these obligations, and that the Council may thereupon take such action and give such direction as it may deem proper and effective in the circumstances.

Poland further agrees that any difference of opinion as to questions of law or fact arising out of these articles between the Polish Government and any one of the Principal Allied and Associated Powers or any other Power, a Member of the Council of the League of Nations, shall be held to be a dispute of an international character under article 14 of the Covenant of the League of Nations. The Polish Government hereby consents that any dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under article 13 of the Covenant.

II. TREATY WITH TURKEY SIGNED AT LAUSNNE ON JULY 24, 1923.

PART I.

PROTECTION OF MINORITIES.

Article 37.

Turkey undertakes that the stipulations contained in Articles 38 to 44 shall be recognised as fundamental laws, and that no law, no regulation, norr official action shall conflict or interfere with these stipulations, nor shall any law, regulation, nor official action prevail over them.

Article 38.

The Turkish Government undertakes to assure full and complete protection of life and liberty to all inhabitants of Turkey without distinction of birth, nationality, language, race or religion.

All inhabitants of Turkey shall be entitled to free exercise, whether in public or private, of any creed, religion or belief, the observance of which shall not be incompatible with public order and good morals.

Non-Moslem minorities will enjoy full freedom of movement and of emigration, subject to the measures applied, on the whole or on part of the territory, to all Turkish nationals, and which may be taken by the Turkish Government for national defence, or for the maintenance of public order.

Article 39.

Turkish nationals belonging to non-Moslem minorities will enjoy the same civil and political rights as Moslems.

All the inhabitants of Turkey, without distinction of religion, shall be equal before the law.

Differences of religion, creed or confession shall not prejudice any Turkish national in matters relating to the enjoyment of civil or political rights, as, for instance, admission to public employments functions and honours, or the exercise of professions and industries.

No restrictions shall be imposed on the free use by any Turkish national of any language in private intercourse, in commerce, religion, in the press, or in publications of any kind or at public meetings.

Notwithstanding the existence of the official language, adequate facilities shall be given to Turkish nationals of non-Turkish speech for the oral use of their own language before the Courts.

Article 40.

Turkish nationals belonging to non-Moslem minorities shall enjoy the same treatment and security in law and in fact as other Turkish nationals. In particular, they shall have an equal right to establish, manage and control, at their own expenses any charitable religious and social institutions, any schools and other establishments for instruction and education, with the right to use their own language and to exercise their own religion freely therein.

Article 41.

As regards public instruction, the Turkish Government will grant in those towns and districts, where a considerable proportion of non-Moslem nationals are resident adequate facilities for ensuring that in the primary schools the instruction shall be given to the children of such Turkish nationals through the medium of their own language. This provision will not prevent the Turkish Government from making the teaching of the Turkish language obligatory in the said schools.

In towns and districts where there is a considerable proportion of Turkish nationals belonging to non-Moslem minorities, these minorities shall be assured an equitable share in the enjoyment and application of the sums which may be provided out of public funds under the State, Municipal or other budgets for educational, religious, or charitable purposes.

The sums in question shall be paid to the qualified representative of the establishments and institutions concerned.

Article 42.

The Turkish Government undertakes to take, as regards non-Moslem minorities, in so far as concerns their family law or personal status, measures permitting the settlement of these questions in accordance with the customs of those minorities.

These measures will be elaborated by a special Commission composed of representatives of the Turkish Government and of representatives of each of the minorities concerned in equal number. In case of divergence, the Turkish Government and the Council of the League of Nations will appoint in argeement an umpire chosen from amongst European lawyers.

The Turkish Government undertakes to grant full protection to the churches, synagogues, cemeteries and other religious establishments of the above-mentioned minorities. All facilities and authorisation will be granted to the pious foundations, and to the religious and charitable institutions of the said minorities at present existing in Turkey, and the Turkish Government will not refuse, for the formation of new religious and charitable institutions, any of the necessary facilities which are guaranteed to other private institutions of that nature.

Article 43.

Turkish nationals belonging to non-Moslem minorities shall not be compelled to perform any act which constitutes violation of their faith or religious observances, and shall not be placed under any disability by reason of their refusal to attend Courts of Law or to perform any legal business on their weekly day of rest.

This provision, however, shall not exempt such Turkish nationals from such obligations as shall be imposed upon all other Turkish nationals for the preservation of public order.

Article 44.

Turkey agrees that, in so far as the preceding Articles of the Section affect non-Moslem natonals of Turkey, these provisions constitute obliations of international concern and shall be placed under the guarantee of the League of Nations. They shall not be modified without the assent of the majority of the Council of the League of Nations. The British Empire, France, Italy and Japan hereby agree not to withhold their assent to any modification in these Articles which is in due form assented to by a majority of the Council of the League of Nations.

Turkey agrees that any member of the Council of the League of Nations shall have the right to bring to the attention of the Council any infraction, or danger of infraction of any of these obligations, and that the Council may thereupon take such action and give such directions as it may deem proper and effective in the circumstances.

Turkey further agrees that any difference of opinion as to questions of law or of fact arising out of these Articles between the Turkish Government and any one of other Signatory Powers or any other Power, a member of the Council of the League of Nations, shall be held to be a dispute of an international character under Article 14 of the Covenant of the League of Nations. The Turkish Government hereby consent that any such dispute shall, if the other party thereto demands, be referred to the Permanent Court of International Justice. The decision of the Permanent Court shall be final and shall have the same force and effect as an award under Article 13 of the Covenant.

Article 45.

The rights conferred by the provisions of the present Section on the non-Moslem minorities of Turkey will be similarly conferred by Greece on the Moslem minorities in her territory.

10. Questions of nationality will remain within the competence of the individual States forming the Confederation. The passenger traffic between the various States included in the Confederation will take place without any restrictions, in particular without passports and visas. The question of free domicile and of right to exercise any gainful occupation of the citizens of the individual States forming the Confederation over the whole territory of the Confederation will be regulated.

12. The Constitutions of the individual State included in the Confederation will guarantee to the citizens of these States the following rights; freedom of conscience, personal freedom, freedom of learning, freedom of the spoken and written world, free organisation and association, equality of all citizens before the law, free admission of all citizens to the performance of all State functions, the independence of the courts of law, and the control of Government by the representative national bodies by means of free elections.

IV. SAFEGUARDS FOR MINORITIES (III)

	Soviet Russia (1936) Article	United States of America (1776)	Switzerland (1931) Article	Germany (1919) Article	Yugoslavia (1931) Article	Czechoslovakia (1920) Article	Poland (1942) Article	Danzig (1920) Article	Lithuania (1938) Article	Other Countries	
1	2	3	4	5	6	7	8	9	10	11	
I. FREEDOM OF CONSCIENCE:											
1. Freedom of Faith	124	Amendment 1	49	135	11	121	111	96	14	Turkey; 70: Belgium; 14: Liechtenstein; 37:	Austria; 27 (1): Estonia; 11: Australia; 116:
2. Freedom of religious observance.	124	Do.	...	...	...	.....	111	...	....	Turkey; 75: Belgium; 14:	Austria; 27 (1): Australia; 116:
3. Religious observance is not to disturb public peace.	...	... ..	...	...	...	.....	111 & 112.	...	14	Turkey; 75:	Austria; 27 (1):
II. RIGHTS TO RELIGIOUS INSTRUCTION:											
1. Religious instruction in Schools.	...	... ..	..	149	...	120 (1) and (2).	120	105	81	Belgium; 17.	
2. Religious consolation in public institutions.	...	.....	..	141	...	.....	102	98	88	.....	
III. EQUALITY OF RACES:	123	.....	..	...	4	106 (2).	...	...	...	Turkey; 88: Bulgaria; 57: Estonia; 6:	Belgium; 6: Hungary; 1: India; Section 298.
IV. RIGHTS TO LANGUAGE:											
1. Education of minorities in their own tongues.	...	.....	..	113	..	131; The Czechoslovakian law for the protection of the languages of minorities in Czechoslovakia (1920). Article 5.	...	...	...	The Hungarian law for the protection of minorities (1919), 13: Estonia; 12.	

	Soviet Russia (1936) Article	United States of America (1776)	Switzerland (1931) Article	Germany (1919) Article	Yugoslavia (1931) Article	Czechoslovakia (1920) Article	Poland (1942) Article	Danzig (1920) Article	Lithuania (1938) Article	Other Countries
1	2	3	4	5	6	7	8	9	10	11
IV. RIGHTS TO LANGUAGE—*contd.*										
2. Use of Minorities language in their public institutions.	...	.....	...	...	...	128 (3); The Czechoslovakian law for the protection of the languages of Minorities in Czechoslovakia (1920) Article 5.	109	...	...	The Hungarian law for the protection of minorities (1919) 2, 12.
3. Free development of minorities languages.	...	.....	...	113	...	128 (3).	109	...	...	The Hungarian law for the protection of Minorities (1919) 12.
4. Use of the Minorities' languages in Parliaments and Assemblies.	40	.....	...	...	...	The Czechoslovakian law for the protection of the languages of minorities in Czechoslovakia (1920) Articles 8 and 6.	...	...	...	The Hungarian law for the protection of minorities (1919), 2 and 5: Canada; Section 133: South Africa, Section 137.
5. Use of Minorities' languages in law Courts and State Offices.	...	.....	...	113	...	The Czechoslovakian Law for the protection of the languages of minorities in Czechoslovakia (1920) Articles 2, 4 and 7.	...	...	...	The Hungarian Law for the protection of minorities (1919) 3, 8 and 11: Finland; 14: Canada Section 133.
6. Minorities' languages are used as administrative languages.	...	.....	...	113	...	The Czechoslovakian law for the protection of the languages of minorities in Czechoslovakia (1920), Articles 3, 4 and 7.	...	...	...	The Hungarian Law for the protection of minorities (1919) 4, 5, 6, 7, 9 and 10: Finland; 14.
V. RIGHTS TO EDUCATION:										
1. Right of Education in State schools.	121	.....	...	146	...	.....	...	...	...	...
2. Right to set up private religious schools	...	.....	...	147	...	120 (1) and (2).	...	...	83	Canada; Austria; 93 (1), (2), (3)31 (6): and (4): India; 83.
3. Religious schools set up by the State.	...	.....	...	146	...	.....	...	...	...	...
4. State aid to private religious schools.	...	.....	...	...	...	.....	...	...	83	India 83 (1) and (2).

VI. RIGHTS TO AUTONOMOU INSTITUTIONS:										
1. Right of Minorities to found and administer their autonomous institutions.	...	.....	...	138	...	130	110 and 113.	97	84	The Estonian Cultural Autonomy Law of 1925 Para. 2 (*a*) and (*b*); Para. 3 :
2. Minorities Autonomous Institutions set up by the State.	...	.....	...	...	...	132	...	...	...	Liechtenstein ; 38.
3. State *aid to* Minorities' Autonomous Institutions.	...	.....	...	...	...	132	...	...	...	The Estonian Cultural Autonomy Law of 1925, para. 6 (*a*) and (*b*).
4. Minorities' Autonomous Institutions raise their own taxes.	...	.....	...	...	...	....	...	...	...	The Estonian Cultural, Autonomy Law of 1925, para. 6 (*c*).
VII. POLITICAL RIGHTS:										The Estonian Cultural Autonomy Law of 1925 para. 6 (*d*).
1. Safeguard of general political rights.	123	Amendment 1	49	136	11	.....	...	...	...	Finland ; Liechenstein ; 9 and 14 : 89 :
2. Right to vote. . .	...	Amendment XV. Section 1.	..	...	...	.....	...	...	...	South Africa ; 35 (1) and (2).
3. Right to form political Associations.	...	Amendment 1	...	..	13	.....	...	...	...	.....
VIII. RIGHTS TO PUBLIC EMPLOYMENT:	12, 118, 119 and 120.	.....	...	136	...	128 (2).	...	95	...	Austria ; 27 (2) : The Hungarian Law for the protection of minorities (1919) ; 15 : Belgium ; 95 : Finland ; 9 : India ; 298 (1).
IX. RIGHTS TO TRADE AND COMMERCE.	...	.....	...	...	...	128 (2).	...	...	...	India ; 298 (1).
X. MISCELLANEOUS RIGHTS:	..	.....	40, 53 and 54.	...	16	119 and 133.	95	99	87	Hungary ; Austria ; 2 : 27 (3) : Bulgaria ; Finland ; 41 : 14 : India ; 11 (1), (2) (c) (2). 52 (*b*), 298 (2) (*a*), (*b*), (3).
XI. THE ENFORCEMENT OF MINORITIES RIGHTS.	..	Amendment XV. Section 2.	...	...	...	The Czechoslovakian law for the protection of the languages of Minorities in Czechoslovakia (1920) Article 8.	...	...	..	The Hungarian Law for the protection of minorities (1919), 16.

SECOND CHAMBERS

I

One of the vexed questions of political science is the problem of Second Chambers. The political thinkers of the nineteenth century were nearly unanimous in their support of a Second Chamber, and in the words of Sir Henry Maine, held that " almost any second chamber is better than none ". But in the present century there has been a growing opposition to it, and even where a Second Chamber is allowed to continue or a new one established the general tendency has been to restrict its powers. However, we find that almost all the important States of the modern world have Second Chambers and only very few, *e.g.*, Turkey and Bulgaria, have dispensed with them. It must, however, be pointed that though Second Chambers are regarded as an essential element of federal constitutions, they are the exception rather than the rule in the constituent units of a federation. In the U. S. S. R., and the Union of South Affica the legislatures of the constituent units are all unicameral. Of the 8 provinces in the Dominion of Canada only Quebec and Nova Scotia have Second Chambers. In Switzerland 16 Cantons are unicameral ; two Cantons and four half Cantons still have their old folk-moots or direct assemblies of all the citizens. In Weimar Germany, half the States were unicameral. But, except for Nebraska in the U. S. A., and Queensland in Australia, all the State Constitutions in these two countries have Second Chambers.

The motives for creating or continuing a Second Chamber have usually been mixed. First, there is the force of tradition. For example, in England the representative bodies of the middle ages were organised on the basis of status : the nobles, the clergy and the commoners sat in separate chambers. The first two bodies fused to form the British House of Lords. The Lords, from being the predominant partners, gradually lost their powers to the Commoners ; but even as late as the passing of the Parliament Act of 1911, the Lords had in law, and to a large extent in fact, equal powers with the Commoners.

Secondly, the propertied classes have always looked upon a Second Chamber as a protective armour for safeguarding their interests. This is true of other minority groups as well. As Herman Finer has observed, " Wherever there are interests which desire defence from the grasp of the majority, a bicameral system will be claimed ; for even delay of an undesirable policy is already a gratifying deliverance ". (" Theory and Practice of Modern Government ", p. 740.) This is, for instance, seen in the framing of the French Constitution of 1875 when the Monarchists, defeated at the polls, tried to entrench themselves in a Second Chamber.

Thirdly, many sincere democrats have often felt that there must be a check to prevent hasty legislation by the Lower House. They fear that a Chamber directly and immediately responsible to the populace will be moved by gusts of passion of a momentary character. This is a point of view which has been forcefully expressed by Farrand in narrating an incident in the life of George Washington. " There is a tradition " he writes, "that Thomas Jefferson some two years later, upon his return from France, was protesting to Washington against the establishment of two houses in the Legislature. The incident occurred at the breakfast-table, and Washington asked : ' Why did you pour

that coffee into your saucer ?' 'To cool it,' replied Jefferson. 'Even so, said Washington, 'We pour legislation into the senatorial saucer to cool it.' ("The Framing of the Constitution", p. 74.) While the object is laudable it has always been found difficult to construct a Second Chamber which is responsive to public opinion and at the same time can act as a brake on the impulsive actions of the Lower House. The object is usually sought to be achieved by entrusting the work of choosing the members of the Second Chamber to a specially selected electorate as in Ireland.

Fourthly, a Second Chamber is often formed to provide representation for interests which could not be adequately provided for in the Lower House.

(*i*) In federal constitutions seats are usually allotted to the constituent units in the Lower House on the basis of population, and the members are elected directly by the citizens. But, in the Upper House, equality of representation of the constituent units is generally accepted, *e.g.*, in the U. S. A., and in Australia. Even where, as in Canada, the principle of equal representation has not been strictly adhered to, the principle of allotting seats on the basis of population is considerably modified to give weighted representation to the smaller units.

(*ii*) Again, those who desire the representation of economic groups in the legislature but cannot agree to the abolition of the territorial principle for the Lower House see a way out in the institution of the Second Chamber. It is said that the Upper Chamber gives scope for representation of men of status and experience who do not care to face the risks of popular election. It is also supposed to avoid majority tyranny : the interests of minorities are expected to receive a more patient hearing in a Second Chamber.

Opposition to the system is, however, not inconsiderable even at the present time. The principal ground of attack is that the system is undemocratic. It is held by the advocates of this view that the legislative process in the modern world is sufficiently long drawn-out and complicated even without a Second Chamber. Every measure before being passed by the Legislature is usually discussed for months and sometimes for years on the platform and by the press. Needless multiplication of checks would only make the government less dynamic. It is further held by them that the so-called impulsiveness of the Lower House is only an excuse which the propertied classes have invented to establish a Second Chamber for safeguarding their interests. They still quote Abbé Séyes that if a Second Chamber is in agreement with the first it is superfluous, and if it is not in agreement with it, it is pernicious.

Again, it is argued that experience has shown that it is very difficult to constitute a truly democratic Second Chamber on lines other than those of the first. If the franchise is fixed on a higher level than for the Lower House power would be vested in the propertied classes ; an indissoluble Second Chamber with members retiring in rotation or a Second Chamber with a life longer than that of the Lower House would not be in touch with current public opinion ; the principle of equal representation to constituent units in federal constitutions often leads to minority rule ; and the distribution of seats on a functional basis is at its best to a large extent arbitrary.

Further, the critics say, the politically backward countries suffer from insufficiency of leaders to man two chambers ; small and poor countries find the expense too heavy.

II

There are two main types of Second Chambers: the elective and the non-elective. Between these two types lie a variety of Upper Houses which partake of the characteristics of both. It may be convenient to consider the various Second Chambers of the world in the following order:

(1) hereditary, (2) nominated, (3) partially elected, (4) fully elected, and (5) special types.

Hereditary Second Chambers

GREAT BRITAIN

The British House of Lords is the only hereditary Upper House of any importance that is left now. But even this body is not, strictly speaking, wholly hereditary.

At present the House of Lords consists of persons who hold their seats—

(1) by hereditary right: the title to peerage and membership of the House of Lords are inherited according to the principle of primogeniture, and the hereditary peers form the major part of the house;

(2) by creation of the sovereign: the King has a prerogative right to create new peers at any time, but this power is in practice exercised by the Ministry of the day;

(3) by virtue of office: the Archbishops and Bishops of the realm and the Law Lords; and

(4) by election: the hereditary peers of Scotland elect 16 members from among themselves for the duration of each Parliament. At one time the whole body of the Irish Peers also elected 28 peers for life, but this stopped with the creation of the Irish Free State.

At present the full house consists of about 740 members, but the voting strength is about 720.

Until 1911 the powers of the House of Lords were largely co-extensive with those of the House of Commons. This led to occasional conflicts between the two Houses and many important measures such as the Reform Bill of 1832 were passed by the threat of creating new peers to overcome the opposition of the Lords. Finally its powers were curtailed by the enactment of the Parliament Act of 1911.

At present, all money bills, so certified by the Speaker of the House of Commons, if not passed by the House of Lords without amendment, become law without their concurrence on the Royal assent being signified. Public bills, other than money bills or a bill extending the maximum duration of Parliament, if passed by the House of Commons in three successive sessions whether of the same Parliament or not, and rejected each time, or not passed, by the House of Lords, may become law without their concurrence on the Royal assent being signified, provided that two years have elapsed between the second reading in the first session of the House of Commons and the third reading in the third session. All bills coming under this Act should reach the House of Lords at least one month before the end of the session.

Nominated Second Chambers

The main feature which distinguishes the nominated Second Chamber from its hereditary proto-type is that while the office of the hereditary peer is handed down from father to son and cannot be resigned, the office of the nominated senator is terminable with death or earlier in certain contingencies. Of the fully nominated second chambers, the most interesting instances are those of the Italian Senate under the Constitution of 1848 and the Senate of Canada.

(*a*) *ITALY*

The Italian Senate consisted exclusively of the Princes of royal blood and those nominated by the King for life from certain classes numbering 21 categories as laid down by the Constitution of 1848. Persons who paid over 3,000 *lire* (nominally about 600 pounds) in taxes, persons who had rendered distinguished service for the State, members of the Lower House who had served in three Parliaments or for no less than six years, famous scientists or litterateurs and church dignitaries were eligible for nomination. Persons below 40 could not be nominated. There was no statutory limit to the number of senators, so that the Ministry of the day, in whose hands lay the power of appointment, could utilise it for forcing laws through the Senate.

In theory, the Senate had the same powers as the Lower House, and no bill could become law without its consent. But as the Ministry had the power to appoint any number of additional members, the Senate could not effectively stand against the Lower House, to which alone the Ministry was responsible under the Constitution.

(*b*) *CANADA*

The members of the Canadian Senate are nominated for life by the Governor-General, but in practice he is guided by the advice of the Ministry of the day. The Constitution provides that the number of Senators should not exceed 104 ; but in case Newfoundland is admitted into the Union the minimum should be 102 and the maximum 110. The present membership of the Senate is 96. According to section 22 of the British North America Act, 1867, as amended in 1915, in relation to the constitution of the Senate, Canada is deemed to consist of 4 divisions, namely, Ontario, Quebec, the Maritime Provinces and Prince Edward Island, and the Western Provinces, each of the divisions having an equal representation consisting of 24 members. The distribution of the seats on the basis of provinces is as follows :—

(*a*) Ontario—24.

(*b*) Quebec—24.

(*c*) The Maritime Provinces and Prince Edward Island—24, *i.e.*, Nova Scotia : 10 ; New Brunswick : 10 ; Prince Edward Island : 4.

(*d*) The Western Provinces—24, *i.e.*, 6 members each for Manitoba, British Columbia, Saskatchewan and Alberta.

The constitution of the Senate of Canada is essentially an attempt to work the federal idea through an Upper House on the model of the British House of Lords. In giving effect to the federal idea all that has been possible to achieve is the equal representation of the 4 main divisions of the country, and not of the provinces.

Each Senator must be at least 30 years of age, either a born or naturalized British subject and must reside in, and be possessed of, property, real or personal, to the value of $4,000, exclusive of all incumbrances, within the province

from which he is appointed. In the case of Quebec, he shall have his real property qualification in the electoral division from which he is appointed and shall be resident in that division. A Senator may resign his seat if he so desires. He must vacate it if he fails to attend the Senate for two consecutive sessions of the Parliament, or changes his allegiance, or becomes a bankrupt or is attainted for treason or is convicted of felony or any infamous crime, or ceases to be qualified in respect of property or residence. The power of appointment and removal of the Speaker of the Senate is vested in the Governor-General.

The powers of the Canadian Senate are, in law, equal to those of the lower chamber, excepting that Money Bills must originate in the House of Commons, and convention requires that they may be rejected but not amended. There are no adequate means to adjust differences between the two Houses : all that the framers of the Constitution have done for this purpose is to provide for the appointment of additional members to the Senate, but since the total strength of the House cannot exceed 104, the maximum number that can be nominated at any time to resolve differences is 8.

Thus, in theory, the Canadian Senate is a very powerful body : it has powers nearly equal to those of the Lower House ; the system of nomination for life secures its independence ; and it cannot be cowed down by the threat of unlimited nomination as in the case of the British House of Lords. But, in practice it appears to have been lacking in vitality, and Professor Lees-Smith goes to the extent of saying that Canada has had " a virtually single Chamber Government ". This appears to have been the result of the majority of the members being for the most part, the nominees of the party in power.

Partially Elected Second Chambers

People in India are not unfamiliar with Upper Houses which are partly elected and partly nominated. The existing Council of State (under the 1919 Act) and the Legislative Councils of Madras, Bombay, Bengal, the United Provinces, Bihar and Assam (under the 1935 Act) are examples of this particular type of Second Chamber.

Other interesting examples are the Second Chambers of South Africa and Ireland and that of Japan under its Constitution of 1899.

(*a*) *SOUTH AFRICA*

The South African Senate consists of 40 members. 8 of these are nominated by the Governor-General in Council and 32 elected, 8 from each of the 4 provinces. Of the nominated Senators, 4 are selected mainly for their acquaintance with the reasonable wants and wishes of the coloured races. The Senators of each province are elected by an electoral college composed of the members of each Provincial Council (that is to say, the Legislature of the Province, which in each case consists of a Single House) and the representatives of the province in the House of Assembly of the Union. Election is on the principle of proportional representation with the single transferable vote. Each Senator must be at least 30 years of age, a British subject of European descent, qualified as a voter for the election of members of the House of Assembly in one of the provinces and resident for five years within the Union. An elected Senator must be a registered owner of immovable property within the Union of the value of not less than £5,000 over and above any special mortgage. A nominated Senator holds office for 10 years both in the case of an original appointment and in the case of an appointment to fill a vacancy. An elected Senator holds

office for 10 years unless the Senate be sooner dissolved but a Senator elected to fill a vacancy holds office only for the remainder of his predecessors' term.

By the Representation of Natives Act, 1936, provision has been made for the election of 4 additional Senators, each of whom represents one of the four electoral divisions into which the Union is divided. The Senators so elected hold their seats for five years. They should possess the qualifications prescribed for elected Senators and they enjoy all the usual privileges of Senators.

The Senate chooses its own president. He may be removed from office by vote of the Senate or he may resign by writing under his hand addressed to the Governor-General. Any member of the Senate may similarly resign his office. The quorum for the Senate is fixed at 12.

The South African Senate has only limited powers and is essentially a "house of review". Money bills must originate in the House of Assembly only. The Senate may not amend any bill which imposes taxation or appropriates revenue or monies for the services of the government, nor can it amend any bill so as to increase any proposed charges or burdens on the people. In case of difference of opinion between the two Houses, the constitution provides for a joint sitting. Since the House of Assembly has three times as many members as the Senate the will of the former generally prevails.

The South African Senate has the characteristic features of a unitary constitution. The non-elected members are appointed by the Government of the Union and the members of the Union House of Assembly have a voice even in the selection of the elected members. The Parliament has also the power at any time to alter the composition of and the mode of election to the Senate.

(*b*) *IRELAND*

The Irish Senate called 'Seanad Eireann' is composed of 60 members of whom 11 are nominated by the Prime Minister and 49 elected. Of the elected members, 3 are elected by the National University of Ireland, 3 by the University of Dublin and the remaining 43 are elected from 5 panels of candidates containing respectively the names of persons having knowledge and practical experience of the following interests and services: (1) national language and culture, literature, art, education and such professional interests as may be defined by law for the purpose of this panel; (2) agriculture and allied interests and fisheries; (3) labour, whether organized or unorganized; (4) industry and commerce, including banking, finance, accountancy, engineering and architecture; and (5) public administration and social services, including voluntary social activities. According to the Seanad Electoral (Panel Members) Act, 1937, the panel members are nominated by registered associations and by the members of the Dáil Eireann, the Lower Chamber of the Irish Legislature. Their election is by an Electoral College composed of the members of the Dáil Eireann and 7 persons elected by each one of the Councils of the Counties or County boroughs.

The elections to the Senate are held on the principle of proportional representation with the single transferable vote. A person to be eligible for membership of the Senate must be eligible to become a member of the Lower House.

The powers of the Irish Senate in the matter of legislation are very limited. A money-bill must originate in the Lower House, and though it has to be sent to the Senate for its "recommendation", the Senate must return the bill within 21 days. If the bill is not returned within this period or if it is returned with a recommendation which the Lower House does not accept, the bill

is deemed to have been passed by both Houses at the expiration of 21 days. In regard to other bills, the Senate has, in effect, a suspensory veto for a period of 90 days. It has, however, power to ask for a reference to the people if its view has the support of one-third of the members of the Lower Chamber. This does not extend to bills amending the Constitution.

(c) *JAPAN*

Under the Japanese constitution of 1899, the Upper House of Japan, called the House of Peers, was composed of hereditary, nominated and elected members. Under the constitution, as revised after World War II, the House of Peers will have 300 members, instead of 404 as before. These 300 will include (1) such of the Imperial Princes as are specially designated by the Emperor, (2) 30 members chosen from among the hereditary princes, marquises, viscounts, counts and barons, (3) a maximum number of 125 members nominated by the Emperor for "meritorious service", (4) 4 members of the Imperial Academy, (5) 34 corporative members nominated by the Emperor to represent agriculture, commerce and industry, and (6) 120 elected members from prefectural, urban or rural, districts, who hold office for 6 years with half their number to be re-elected at three-yearly intervals.

Before World War II the House of Peers was noted to be a very conservative body, and more powerful than the House of Representatives. It is to be seen whether the recent changes in its constitution will reduce the House to the position of a mere revising chamber.

(4) Elected Second Chambers

Elected Upper Houses may be considered under two heads :

(*i*) Those in fully federalised States, and

(*ii*) Those in unitary States.

The Upper Houses in fully federalized States, such as the U.S.A., and Australia, present the following salient features :—

(*a*) The representation given to each of the component States is equal ;

(*b*) The Senators are elected from and in the States individually, without any interference from the central authority.

(*c*) The term of office of the Senator is arranged in such a way as to ensure continuity of life to the Senate.

(*i*) Second Chambers in Federal States

(*a*) *UNITED STATES OF AMERICA*

The Senate in U.S.A. consists of 96 members, 2 members from each of the 48 States. They are chosen by popular vote, one-third retiring or seeking re-election every 2 years. A Senator must not be less than 30 years of age, must have been a citizen of the U.S.A. for 9 years, and a resident of the state from which he is chosen.

The United States Senate is "the only example in the world of a Second Chamber that is incontestably more powerful than the first". (Lees Smith : "Second Chambers", p. 154.) It has complete freedom in the matter of initiating legislation, and can amend or reject any bill including a money bill

which originates in the Lower House. The consent of both the Houses is essential for the enactment of any law and there is no provision for resolving conflicts between the two Houses. In addition to its legislative functions, the consent of the Senate, by a two-thirds majority, is required for the ratification of all treaties initiated by the President with foreign powers. Its approval is also necessary for major appointments made by the President. It has further the sole power to try all impeachments.

The Vice-President of the United States of America is the President of the Senate.

(b) *AUSTRALIA*

The Australian Senate is composed of 36 members, 6 from each of the 6 States of the Commonwealth. Like the American Senate, the Australian Upper House embodies the federal idea. The Parliament may make laws, increasing or diminishing the number of Senators for each state, but only in such a way that the equality of representation of the various states is maintained and that none of the original states have less than 6 members. The Senators are chosen for a term of 6 years, half of the members retiring every 3 years. In the event of a prolonged disagreement between the two Houses of Parliament, the Governor-General may dissolve both Chambers, in which case the continuity of the existence of the Senate is lost and a wholly new Senate will have to be elected.

The electorate for the Senate and the House of Representatives is the same. But in the former case, the entire state forms the constituency, each voter having as many votes as there are seats to be filled. The qualification of a senator are also the same as those of a member of the House of Representatives. Accordingly, every Senator must be a natural born subject of the King or must have been for 5 years a naturalized subject under a law of the United Kingdom or of a state of the Commonwealth. He must be at least 21 years of age, must possess the electoral qualifications and must have resided for at least 3 years in Australia.

Unlike the American Senate, the functions of the Australian Senate are purely legislative. The Senate has equal powers with the House of Representatives in respect of proposed laws except that money-bills must originate only in the Lower House and cannot be amended (though they may be rejected) by the Senate. The Senate may, however, at any stage return to the House of Representatives any proposed law which the Senate may not amend, requesting by message, the omission or amendment of any items or provisions therein. But if there is a deadlock between the two Houses, the Senate can force the dissolution of both the Houses even in regard to money bills. If the deadlock continues even after the reconstituted Chambers meet, it is resolved by a joint sitting of the two Houses.

The Australian Senate has not allowed its powers to lapse by disuse and it is considered to be the most powerful second Chamber in the British Dominions.

(ii) Second Chambers in Unitary States

FRANCE

Under its latest Constitution, France has a Parliament consisting of two houses, the National Assembly and the Council of the Republic. The Assembly is constituted on a territorial basis by universal suffrage. According to the Constitution, the number of members of the Council cannot be less than 250 or

more than 320. The present strength is 315. Of these, 50 are elected by the National Assembly by the method of proportional representation; 65 are allotted to Algeria and the Overseas Territories; and 200 are elected by groups of "Communes" and "Departments". For the election of members allotted to "Departments", electoral colleges based on the "Canton" are formed. One delegate is allowed for every 300 registered voters, and the delegates are elected by universal suffrage on the principle of proportional representation. Of the 200 seats allotted to "Departments", 125 are filled directly by the electoral colleges, each "Department" forming a constituency for the purpose with one Councillor for every 500,000 or part of 500,000 inhabitants. Where a "Department" is allotted only one seat, the candidate who obtains the greatest number of votes is elected without an absolute majority being necessary. Where more than one seat is allotted to a "Department", seats are allotted to party lists according to the rule of the largest average. The remaining 75 seats are filled by a Central Commission in Paris from among the candidates who have not been returned in such a way as to make up for inequalities in the representation of parties resulting from the "Departmental" elections.

Each of the Chambers is the judge of the eligibility of its members and the regularity of their election; it alone receives their resignations. The two Chambers hold their sittings simultaneously.

Article 14 of the Constitution lays down, "The National Assembly alone votes the law. It cannot delegate this right". The President of the Council of Ministers and the members of the Parliament can initiate laws. The members of the Council submit their proposals through their own Council office, and they have to be forwarded without debate to the office of the National Assembly. The latter will not accept any bill which will result in any decrease of receipts or creation of expenditure.

A bill is placed before the Council of the Republic after it has been voted in the first reading by the National Assembly. In the case of non-Budget bills it must give its opinion within two months after it has been transmitted by the Assembly. If it is a bill relating to the Budget the period taken for consideration by the Council should not exceed that taken by the National Assembly. So also, where the bill is of an urgent character, and if the Assembly so decides, the Council cannot have more time than that taken by the Assembly itself. A bill or part of a bill rejected by the Council can be passed into law by an absolute majority of the members of the Assembly.

(5) Special Types

(*a*) *SWITZERLAND*

In Switzerland the Upper House is called the Ständerat or the Council of States. It consists of two members from each of the 19 cantons and one member from each of the half-cantons into which the remaining 3 cantons are divided. The total membership of the House is 44. There is thus equality of representation among the various units. The constitution leaves the details regarding the election and term of Office of the members to the Cantonal Governments themselves. At the present time the people in 21 cantons or half-cantons directly elect the members; in the 4 remaining cantons or half-cantons the members are elected by the Cantonal Legislatures. The term of office of the members varies from one to four years, the term being long in the cantons with direct election of members and short in cantons where they are elected by the Legislature.

The Swiss Second Chamber has in general equal powers with the first. The two Chambers sit together as one body to elect executive, judicial and other officials, to issue amnesties and pardons, and to settle administrative disputes and conflicts of jurisdiction. For all other matters they function separately. The Ministers are responsible to neither House, though they must answer questions put to them equally in both. Proposals for legislation may be initiated in either House and there is no special sanctity in regard to money bills. Everything that comes before the Federal Legislature requires the concurrence of both Houses. If a difference of opinion arises between the two Chambers their respective committees try to arrive at a compromise. Normally this is not difficult, and in the absence of party government there is no incentive for any section to adopt an uncompromising attitude.

The position of the Swiss Council of States is often considered to be anomalous. It is in the strict sense not a Federal Chamber, for it is not part of its business to safeguard the interests of the cantons as opposed to those of the Confederation; nor is it purely a Second Chamber, since it has no definite functions of Legislative revision or veto.

(*b*) *U.S.S.R.*

The legislative power of the U.S.S.R. is exercised exclusively by the Supreme Soviet of the U.S.S.R. which consists of two Chambers, the Soviet of the Union and the Soviet of Nationalities. The Soviet of Nationalities is elected by the citizens of the U.S.S.R. according to Union and Autonomous Republics, Autonomous Regions and National areas on the basis of 25 deputies from each Union Republic, 11 deputies from each Autonomous Republic, 5 deputies from each Autonomous Region and one deputy from each National Area.

The Supreme Soviet of the U.S.S.R. is elected for a term of 4 years. Both Chambers of the Legislature have equal rights, including the right to initiate legislation. A law is considered adopted if passed by both Chambers by a simple majority vote in each. The sessions of both Chambers begin and terminate simultaneously. If there is disagreement between the Soviet of the Union and the Soviet of Nationalities, the question is referred for settlement to a conciliation committee formed on a parity basis. If the conciliation committee fails to arrive at an agreement, or if its decision fails to satisfy one of the Chambers, the question is considered for a second time by the Chambers. Failing agreement between the Chambers, the Presidium of the Supreme Soviet of the U.S.S.R. dissolves the Supreme Soviet of the U.S.S.R. and orders a new election.

The Supreme Soviet of the U.S.S.R. at a joint sitting of both Chambers elects the Presidium of the Supreme Soviet of the U.S.S.R.

(*c*) *WEIMAR GERMANY*

Under the Weimar Constitution of Germany there was a Reichsrat (also called the Reich Council) "formed in order to represent the German State in the legislation and administration of the Reich". In the Reichsrat, each State had at least one vote. In the larger States, one vote was assigned to each million inhabitants. Any surplus not less than the total population of the smallest State was reckoned as a full million. No State could be represented by more than two-fifths of all the votes. (This was provided to prevent the domination of the State of Prussia.) The number of votes allotted to the States could be readjusted by the Reichsrat after each general census of the population.

The States were represented in the Reichsrat by members of their Go ern ments. This was a survival of the system obtaining under the old German Empire. But unlike the old Bundesrat the Reichsrat was entirely overshadowed by the Reichstag, which was the popularly elected House.

The Reichsrat had no power to initiate legislation. The laws of the Reich were passed by the Reichstag alone, but the consent of the Reichsrat was necessary for the introduction of any Bill in the Reichstag by the Government. Should the Government and the Reichsrat not be in agreement the former could nevertheless introduce the Bill ; but, in doing so, had to state the divergent view of the Reichsrat.

The Reichsrat, however, had an important and peculiar veto. It could lodge an objection with the Government against a law passed by the Reichstag, within two weeks after its passage. The law was then to be reconsidered by the Reichstag, and if the two Houses could not still agree, the President of the Reich, could, within 3 months, order a referendum on the subject in dispute. If the President did not make use of this right, the Bill would not become law. Should the Reichstag decide by a two-thirds majority against the objection raised by the Reichsrat, the President was required within 3 months either to promulgate the law in the form approved by the Reichstag or order an appeal to the people.

The Reichsrat, under the Weimar Republic, thus occupied a peculiar position. It has been claimed that the German Parliament was not a bicameral Legislature, and that the Reichstag alone constituted the German Parliament. " The Constitution of Weimar provided a one Chamber system. Nor does the existence of the Reich Council [Reichsrat] disprove this fact. For the Reich Council, an Assembly of instructed representatives of the various German Lands [States] is no more an Upper Chamber similar to the United States Senate, than was the Federal Council (Bundesrat) of the Imperial Constitution." (J. H. Kraus : " Crisis of German Democracy ", p. 151.)

NORWAY

The Norwegian Parliament, the *Storting*, consists of 150 members elected once in four years by universal adult suffrage by the method of proportional representation. Soon after it is constituted it elects from among its own members one-fourth to constitute the Second Chamber, the *Lagting* ; the remaining three-fourths constitute the First Chamber, the *Odelsting*. The membership of the *Lagting* remains unchanged for the whole life of the Parliament by which it is elected except for the filling of casual vacancies which is done by special nomination. Provision is also made for joint sessions of the two Chambers, the *Storting in plenum*.

The Constitution does not define clearly the purposes for which the two Chambers must meet separately or in joint session. By the provisions of the Constitution and by usage, bills involving questions of finance, concessions for works of public utility, the naturalisation of foreigners, amendments to the Constitution and motions for controlling the Executive are considered at the joint session, and decisions are reached by a bare majority vote. All record of such diplomatic matters and of such matters relating to military command as are to be kept secret are laid " before a committee consisting of not more than nine members chosen from among the members of the *Odelsting* if any member of the committee moves that the *Odelsting* give its opinion on the subject, or that an action be brought in the High Court of the Realm ". The only

purpose for which the two Chambers sit separately is in respect of ordinary legislation. Even here it is provided that " every bill shall first be introduced in the *Odelsting* ", thus denying the Second Chamber any right to initiate bills. For resolving deadlocks between the two Chambers provision is made for a joint session of the two Chambers at which a two-thirds majority is required for the passage of the contested bill.

The *Lagting* is vested with certain judicial powers. In conjunction with the Supreme Court of Justice, it constitutes the High Court of the Realm which pronounces judgment " in the first and last instance in such actions as are brought by the *Odelsting* against members of the Council of State (the Ministry), or against members of the Supreme Court of Justice, or against members of the *Storting* for criminal offences which they may have committed in that capacity".

There is great diversity of opinion among scholars as to whether the Norwegian Parliament is unicameral or bicameral. Commenting on this, Lees-Smith observes " The best summary of her (of Norway's) reply to the Second Chamber problem is that she possesses a one-chamber system with the rudiments of a two chamber system. This is the broad conclusion reached by the chief Norwegian Professors of Law ". (p. 201, Second Chambers in Theory and Practice.) Again, Marriott observes " That the *Lagting* fulfils some of the functions appropriate to a Second Chamber is evident ; but, on the other hand, the members of it possess no differentiating qualifications ; they are merely selected from among, and by, the members of the *Storting*, and do not sit by virtue of any independent right conferred either by the electorate, or by official nomination or by hereditary privilege. Norway, then, must still languish in the shade of ambiguity ". (p. 408, Mechanism of the Modern State, Vol. I.)

SYSTEMS OF REPRESENTATION

Modern democracy is generally representative democracy. The institutions of the Initiative and the Referendum play only a minor part in democratic decisions, most of which are taken by the legislature on behalf of the people. The setting up of a truly representative legislature is therefore of the greatest importance for the success of democracy.

Until late 19th century, however, the question of representation received little attention at the hands of statesmen and political thinkers. Political discussions centred round the merits of democracy as a form of government and the safeguards necessary for protecting the people from over government. It is only in recent years that it has been realised that the form of representation has far-reaching political consequences, sometimes affecting the very foundations of democratic government. Here, a brief account of the various forms of representation is given, with particular attention to the system of proportional representation.

Single-Member Constituencies

Under this system the country is divided into as many constituencies as there are seats to be filled, and each constituency returns one member. Among the candidates contesting a seat the one securing the largest number of votes is declared elected.

This system has had a long history behind it, and has been adopted by most countries of the world at one time or the other. While it is now losing its hold in many countries it is still the main basis of representation in Great Britain, Canada, South Africa and the U. S. A. Although there are many front rank political thinkers who prefer it to any of the alternatives suggested, the working of the system has brought to light many short-comings and the volume of opposition to it has been increasing.

The system has been subjected to criticism mainly from three angles. (1) The very assumption on the basis of which it is defended, namely, that interests within any given region are fundamentally unified and that they vary from region to region, has been questioned. It has been suggested by some that representation should be of economic groups and not of territorial groups. Others have suggested that representation should be on the basis of religion and culture. (2) The second line of criticism is based on the principle that all minority groups, whether they be political, economic or cultural, have a right to be represented in the legislature in proportion to their electoral strength. Under the system of the single member constituency, the minority parties, more often than not, would be grossly under-represented. The number of seats a minority party captures depends not upon the support it has in the country at large but upon the concentration of its electoral strength in particular constituencies. For instance, to capture 25 per cent of the seats in the legislature, a party must have sufficient support to win seats in 25 per cent of the constituencies ; but if its supporters are diffused it may not capture even one seat even though it polls 25 per cent. of the votes in all the constituencies put together. (3) The third line of criticism is that it does not even ensure always the success of the majority party. First, within the constituencies, if

there are three or more candidates for a seat, the successful candidate is often elected only by a relative and not an absolute majority of the votes. It is by no means certain that if the contest had been confined to the winning candidate and the most leading of the defeated candidates the former would have won. Secondly, sometimes, even when there are only two major parties, the party which has polled a smaller number of votes than the other in the country at large is returned to power. Such an anomaly would arise more frequently when there are three well-organised parties. Thirdly, where two parties are more or less equally balanced, a small group of voters who can turn the balance to the benefit of either of the parties will command power quite disproportionate to their number. The influence that Jewish votes have on the foreign policy of the U. S. A. is a case in point : The Jews form only about 3 per cent, of the population of the country.

Recent discussions regarding the forms of representation centre round the above defects and various suggestions have been made to remedy them.*

Majority Preferential Voting Systems

Various forms of voting are devised to ensure that every person returned to the legislature by a single member constituency really commands the confidence of the majority in his constituency.

(1) *The Second Ballot.*—Under this system two election days with an interval of a week or two are fixed. If in the first election one of the candidates secures a majority of the votes cast he is declared elected. Otherwise, a second ballot is taken and voting is confined to the two candidates who in the first election obtained most votes. Sometimes, as in the case of the election of candidates for the office of the President by the national conventions of the great political parties of the United States, successive elections are held with a view to eliminate the weakest of the candidates until one of them polls an absolute majority of the votes cast.

(2) *The Alternative Vote.*—This seeks to achieve the same object as the Second ballot without the trouble of a second election. Under this system, the voter is required to mark his choice in the order of preference. The count is on the basis of the Hare system of the single transferable vote to be described later.

There is no doubt that the second is to be preferred to the first as it avoids the necessity of a second ballot. The above forms of voting generally ensure that successful candidates do command the confidence of a majority in their constituencies. But they do not remedy the other defects of the system of the single member constituency : they do not protect the minorities ; they do not prevent a party polling a lesser number of votes in all the constituencies put together from getting a larger number of the seats ; they do not also prevent major parties from being held to ransom as it were by small groups of voters holding the balance in the constituencies.

*There is another system of voting which suffers from all the shortcomings of the single member constituency system. Under this, in a multi-member constituency, the voter is given as many votes as there are seats to be filled and he cannot give more than one vote to one candidate. This is known as the Block Vote or the Compulsary Distributive Vote.

Gerrymandering and Protection of Minorities

Gerrymandering may be defined as the drawing of electoral districts in such a way as to favour one political interest or the other. The term itself has unhappy associations. In 1812, in the State of Massachusetts in the U. S. A., Governor Elbridge Gerry saw that the electoral districts were drawn in such a way that his party, the old Republican Party, profited most from it ; as a result his party won 29 seats in the Senate with only 50,164 Votes while the opposite party, the Federalists won only 11 seats with 51,766 Votes. This device has sometimes been employed for quite legitimate purposes such as the protection of minorities. But, it can be of help only to minorities which are concentrated and not diffused. The chances of its misuse are, however, great.

Proportional Representation

In general " the term proportional representation is used to designate the various electoral devices which aim to secure a legislative body reflecting with more or less mathematical exactness the strength of the groups in the electorate."* There are different forms of it and they all aim at securing adequate representation for the minorities. Under this system, it is claimed, any interest or group, whether it be economic, religious or political, would secure representation in proportion to the support it has among the electors. The system is highly elastic and can satisfy the claims of diverse interests. Protection will be given as long as, and only as long as, a group of electors large enough to claim a representative wants it. This system, it is further claimed, offers a remedy for all the defects of the system of the single member constituency to which reference has already been made.

The various forms of proportional representation may now be considered.

The Non-Tansferable Vote

Electoral devices under proportional representation may be classed under two broad headings : (1) Proportional representation with the non-transferable vote ; and (2) Proportional representation with the single transferable vote. The basis of distinction lies in the transferability or otherwise to others of the vote or votes cast to particular candidates.

There are mainly three types of the non-transferable vote : (*a*) the limited vote ; (*b*) the single non-transferable vote ; and (*c*) the cumulative vote. Multi-member constituencies are essential in all the three cases. Under the limited vote a voter has two or more votes, but less than the number of candidates to be elected by the constituency. The single non-transferable vote is a special form of the limited vote. Each voter is allowed to vote for only one candidate while there is more than one seat to be filled, and the candidates who receive most votes are declared elected. Under the cumulative vote the voter has as many votes as there are candidates to be elected from the constituency, but he may distribute them among the candidates in any manner that he sees fit : he may give all his votes to one candidate or distribute them among several candidates.

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*Harold F. Gosnell, Article on Proportional Representation in the Encyclopaedia of Social Sciences. Vol. XII.

All the three systems are intended to secure protection to the minorities. In a three member constituency, for instance, if 25 per cent of the electors plus one join together and vote for one of their own choice candidates they can be sure of his being returned both under the single non-transferable vote and the cumulative vote. Both systems, however, suffer from two defects. (1) Since the votes are not transferable, votes cast on defeated candidates do not help in the return of a member. (2) It can never be said that a party secures seats in proportion to the votes cast in its favour within the constituencies and the country at large. The number of seats a party captures in an election depends on the correctness with which it has gauged the support it commands in each of the constituencies, and set up the right number of candidates on its behalf.*

As between the single non-transferable vote and the cumulative vote the former is simpler and better suited to the needs of an illiterate electorate. But the latter is preferred by party organizers as it makes the work of organising the electorate easier. Under the single non-transferable vote, a party which has put up candidates for more than one seat in a constituency must divide the constituency into as many geographic units as it has set up candidates, and instruct the electors in each unit to vote for a particular candidate. To illustrate the point by an example, Burdwan District in Bengal, we shall say, has been formed into a multi-member constituency with four seats. A party, hopeful of securing only two seats, has to estimate the probable number of its supporters in the different parts of the district and group the sub-divisions and thanas into two blocks, each block being instructed to vote for one of the two party candidates. Any gross mis-calculation in the estimate of the distribution of its supporters might seriously affect its electoral chances. Under the system of the cumulative vote, this difficulty of forming electoral blocks is avoided. A party will merely have to tell its followers : " Each of you has four votes : give two to candidate A and two to candidate B, both of whom have been set up by the party ." In practice the difference in the form of voting often produces different results.

The Single Transferable Vote

The principle behind the single transferable vote is briefly this. Though the legislature is composed of hundreds of representatives and a constituency returns more than one representative an elector cannot claim to have all of them as *his* representatives ; he has a right to have only *one* of them as his representative. He can, therefore, have only one vote even in a multi-member constituency. But he must be sure that the person for whom he votes is returned ; otherwise he would in practice be denied one of the fundamental rights of democratic citizenship, *i.e.*, the right to be represented in the legislature. He cannot be certain of this if he has only one vote and can give this only to one candidate. If his candidate is defeated, his vote would be a waste ; if his candidate gets more votes than is necessary to secure his election his vote would be superfluous and hence again a waste. This waste could be prevented by the adoption of the system of the single transferable vote. Under this system the elector would have only one vote ; but if his vote proves ineffective for either of the above two reasons it is transferred to another candidate to help him to get elected. The number of votes that do not help in the election of a candidate is kept very low. The transfer of votes from one candidate to another is effected in one of two ways. Under the first, the elector votes for the candidates directly and individually ; he has unfettered freedom to indi-

* See Appendix. I: Page 165

cate his first choice and succeeding choices. This is the well known Hare System, popularly known as the " Single Transferable Vote ". Under the second, each party presents a list of candidates for the acceptance of the electors. The elector votes primarily for a party ; in voting for a party list he accepts the order of preference previously determined by the party ; even where he is permitted to express his preference to individual candidates he is not allowed to go outside the party list. This is known as the " List System of Proportional Representation ". Both the systems are equally in vogue and popular.

(a) The Single Transferable Vote (Hare System)

Under this system, " the voter indicates his preferences among the various candidates, by marking his first choice and his succeeding choices with the appropriate numerals ". For the purposes of the count all the ballots of a constituency are brought to a central place. There are four distinct stages in the count. There is first the fixing of the number of votes a candidate must get if he is to be considered elected beyond all reasonable doubt, or what is commonly called the fixing of the Quota. There is secondly the counting of votes on the basis of the first choices of the electors. All those candidates who secure the quota that is fixed or anything above it are declared elected. Thirdly, if there are seats yet remaining unfilled, the surplus votes, or votes in excess of the quota polled by the successful candidates, are transferred to the candidates still in the run on the basis of the second or succeeding choices of the electors. All those who with the help of these votes reach the quota are declared elected. Fourthly, if there are seats yet to be filled after the surpluses have been transferred, candidates who have polled the least number of votes are eliminated and their votes transferred to the candidates still in the run on the basis of their second or succeeding choices. This is done until all the seats assigned to the constituency are filled.

These four stages of the count are common to all the forms of the single transferable vote. Various technical devices* have been developed to gauge the preferences of the electors with great exactitude and give effect to their real will. The degree of exactness required depends upon the size of the electorate. Where the electorate is small the form of the count must be such as to secure the greatest possible exactness, for even minor errors might greatly affect the results. Where the electorate is large as would be the case in respect of national and municipal elections the form of the count could be much more simple without materially affecting the results.

(b) The List System

Under this system each party presents a list of candidates in the order of preference it wants them to be elected. The elector may vote for any one of the party lists, but not for more than one. In voting for a party list he tacitly accepts the order of preference fixed by the party. In many cases, however, he is allowed to express his preference for any of the candidates included in a party list. Where this is done there is really an election within an election : the elector votes for a party and also for a particular candidate within a party list. Where it is desired that the elector should have maximum freedom in selecting the party candidate the single transferable vote (the Hare System) is adopted. The other forms of voting such as the single non-transferable v ote ean also be used.

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* See Appendix II Page 167 for a discussion on these devices.

The most difficult problem to be faced under this system is the apportionment of seats among parties in proportion to the votes polled by them. With the known technical devices* it is possible to reach any degree of exactness that is considered politically desirable.

(c) *Vacancies.*

The problem of vacancies is the same under both the Hare and the List Systems. The strictly logical procedure to fill a vacancy is to have an election by the same voters who elected the member whose seat has fallen vacant. But this cannot be done even if it were possible without violating the secrecy of the ballot. Therefore, the procedure that is generally adopted is to preserve the ballot papers which helped a candidate to win a seat, and, if his seat falls vacant between two general elections, to select his successor on the basis of the succeeding choices marked on those ballot papers. The defect of the system is obvious ; it is based on the results of the old election and it does not indicate in any way the changes in public opinion after it.

Other methods of filling a vacancy have been advocated and practised. Vacancies are filled by election by the whole of the multi-member constituency or by election by all the rest of the members of the legislature. These would favour the majority party and are inimical to minority interests. There are a few methods which seek to protect the latter. (1) The electors of the wards in which the member whose seat has fallen vacant polled the largest proportion of first choice votes may be allowed to vote at a bye-election. (2) The party to which the member belongs or the persons who nominated him at the time of the general election may be allowed to select his successor. Sometimes, the legislature by convention elects a person to fill a vacancy from among the members of the party to which the member whose seat has fallen vacant belonged. (3) Although this suggestion does not appear to have been made earlier, every member of the legislature may be required to nominate two persons as his successors in case of his death or resignation ; freedom may be given to the members to change their nominees any time. This procedure would be particularly useful in respect of non-party or independent members.

The Single Member Constituency and The Single Transferable Vote

Of the various forms of representation discussed above, controversy has centred round the relative merits of the single-member constituency with plurality voting, and proportional representation of the Hare or the List variety. The case against the single member constituency has been considered above, and it is strong. But the case against proportional representation is by no means weak or unworthy of consideration. Of the objections levelled against it and the answers given may be mentioned the following.

The first objection is that the system cannot be easily understood by the voter or easily worked by the returning officer. Where there is a literate electorate the advocates of proportional representation reply that there is not much substance in this objection. As for the Returning Officer, he would be educated enough to understand the rules prescribed for the count and observe it strictly. The persons that ought to know the full significance of the system are the legislators ; since the forms of proportional representation are many

See Appendix III Page 170

they must understand the political implications of each one of the forms and select the one best suited to the needs of the country. In a country like India the problem of illiteracy among the electors would, however, have to be faced.

The second objection is that constituencies under the system are unwieldy, and as a result the electoral expenses of candidates are very great and the personal touch between electors and their representatives is lost. To this the advocates of proportional representation reply that electoral expenses can be reduced and the difficulty of canvassing support minimised by effective co-operation among the candidates of the same party. In the case of small minority parties much depends on the intimacy of the contact they have maintained in the period before the election. Again, they urge, unless the constituency is too big it should not be difficult for a member to keep in touch with his constituents. The press, the radio and the rapid means of communication available today should go a long way in helping the member in his task.

The third objection is that no satisfactory system of bye-election under the system has been suggested and a very valuable instrument to gauge the trend of public opinion between two general elections is lost. The advocates of proportional representation reply that this is only of minor importance and ought not to be pressed.

The fourth objection is that its effect on the party system is particularly disastrous. It gives birth to a multiplicity of parties, each party being wedded to one pet object or the other. Since the minor parties are sure of being returned with the support of their own limited following they have no incentive to coalesce with other parties with similar idealogies. Where the system of parliamentary government prevails the cabinet is formed after a good deal of mutual bargaining, and the association is purely temporary. There is no strong bond binding together the parties which form the coalition government. As a result, no clear cut policies are evolved; legislation is ineffective; the executive government is week and unstable. There is a striking contrast between the fixed determination of each of the parties to realise its objective and the unstable vacillating character of the executive government. This provides the right background for the rise of dictatorship or of a strong bureaucracy.

The advocates of proportional representation, however, observe that no such generalisation is warranted. Countries without proportional representation such as France have not escaped from multiplicity of parties or weak government, and countries with proportional representation like Ireland (Eire) do not suffer from these evils.

But, it appears that the system of proportional representation is not an integrating force compelling the smaller units to combine together to form larger ones for the purpose of effective political action; by making it possible for small parties to function effectively, it encourages them to maintain their individuality even at a high cost. Where the social forces are strongly in favour of two parties, its disintegrating influence is not felt, *e. g.*, in Ireland, or as it might be the case the Great Britain. But where the tendency is otherwise it accentuates the situation *e.g.*, Germany under the Weimar Constitution. A country which has no strongly developed parties stands more to lose by the adoption of proportional representation than a country which has two strongly developed parties which cannot be easily broken up.

There is, however, general agreement even among the critics of proportional representation that the application of the system is a necessity in the case of countries with self-conscious racial or communal minorities.

APPENDIX I

CUMULATIVE VOTING AND ORGANISATION OF THE ELECTORATE

How difficult it is for a party to gauge the support it has among the electors and set up the right number of candidates will be seen from the following examples taken from the Provincial elections of 1937.

I. An example of correct ganging.

Bombay Legislative Council : Bombay city and Suburban Districts.

(4 Seats.)

Name of candidate.	Party affiliation.	Votes Polled.
1. Mr. B. N. Karanjia*	Independent	1,552
2. Mrs. Hansa Ben Mehta*	Congress	1,227
3. Mr. Ratilal Mulji Gandhi*	Do.	1,105
4. Prof. S. R. Davar*	Independent	883
5. Dr. M. Venkata Rao	Do.	728
6. Dr. M. C. Javle	Independent Sanatanist	501
7. Mr. U. S. Desai	Independent	416
8. Mr. S. G. Agwane	Scheduled Caste	195

The Congress Party contested only two out of four seats. If it had under estimated or over-estimated its electoral strength and nominated less or more candidates it would have lost a seat.

II. Loss of both seats due to over-estimation.

C. P. and Berar Legislative Assembly : Bhandara Sakoli (General Rural).

(2 Seats.)

Name of candidate.	Party affiliation.	Votes Polled.
General Seat.		
1. Mr. Ganapatrao Yadav Rao Pande*	Independent	16,711
2. Mr. S. B. Palsule	Congress	16,530
Scheduled Caste reserved.		
3. Mr. Raghobha Gambhira*	Ambedkarite	7,916
4. Mr. Suraj Ukrkunda	Congress	816
5. Mr. Gangaram Mathaji	Independent	3,262
6. Mr. Pandurang Palkoji	Do.	1,109

*Name of Successful Candidate.

If the Congress Party had contested only one seat, Caste Hindu or Scheduled Caste, it would have secured a seat.

III, Loss of seat due to wrong distribution of votes between the Caste Hindu and the Scheduled Caste candidates,

C. P. Legislative Assembly : Hinganghat—Wardha (General Rural) .

(2 Seats.)

Name of candidate.	Party affiliation.	Votes Polled.
General Seat.		
1. Seth Pukraj Cochar*	Congress	14,004
2. R. H. Kotambkar	Non-Brahmin	8,617
3. R. N. Deshpande	Independent	257
Scheduled Caste reserved.		
1. Dasarath Patil*	Independent	3,226
2. Keshao Narayan	Do.	1,659
3. Viswanath	Congress	1,068
4. Daulat Mangulji	Independent	326

If the Congress Party had ensured a better distribution of votes between its cand idates, it could have won both the seats.

*Successful candidate.

APPENDIX II

THE SINGLE TRANSFERABLE VOTE

(1) How the Quota is fixed

The problem in fixing the quota is to arrive at the *right* number of votes necessary for the election of a candidate. It should not be less because it would be unfair and may lead to the election of more candidates than there are seats ; it should not be more because the surplus votes, or votes cast more than is actually necessary for the election of a candidate, are superfluous and hence wasted.

Simple Quota—In a multi-member constituency of five members, with the number of electors and number of valid votes cast at 1,000, the quota which would at first sight appear to be necessary to secure the election of a candidate beyond all reasonable doubt is 200 *i.e.*, the number of valid votes cast divided by the number of seats to be filled. This is known as the Simple Quota.

Droop Quota.—In the above example 6 candidates cannot get 200 votes. If the sixth man gets one vote less than the quota he would still be defeated. On this basis, a new quota which is much less than the Simple Quota, can be fixed " by dividing the total number of valid ballots by one more than the number of seats to be filled and adding one to the result, disregarding any fraction that might arise ". In the above example it will be $\frac{1000}{5+1}=166\frac{2}{3}+1=167\frac{2}{3}$. Omitting the fraction it would be 167. The five winning candidates would get $167 \times 5 = 835$ Votes. The sixth candidate or the defeated candidates collectively would not get more than 165 votes. This form of fixing the quota was first suggested by one Mr. Droop, and is, therefore, popularly known as the Droop Quota. This is found to give satisfactory results in all big elections and is the one generally adopted.

The Changing Quota.—Where the electorate is small, even this system of fixing the quota is found to be not sufficiently accurate. A further effort is made to avoid wastage of votes and fix the quota at the absolute minimum required to secure the election of a candidate. At the counting of the first preference votes the Droop Quota is the right quota ; it cannot be further reduced. But after the first count the number of candidates in the run would be reduced, because one or more of them is declared elected ; the number of valid votes for transfer would also be reduced by the absence of expressions of second and succeeding choices on the part of a number of electors. In the above example one of the candidates is declared elected, and under the system of Droop Quota he is assigned 167 votes. We have 833 votes left. At the second count, in transferring the surplus votes of the winning candidate, it is found that 53 electors have failed to express a second choice. The number of ballots remaining for distribution among the candidates still in the run is reduced to $833-53=780$. Applying the Droop Quota principle to the new situation it will be found that $\frac{780}{4+1}=156+1=157$ votes are enough to secure the election of the second candidate beyond all reasonable doubt. At the first count the quota was fixed at 167 ; at the second count it is fixed at 157, 10 less than the former. The same principle is applied at every succeeding count till all the seats are filled. Since there is no one fixed quota for the whole of the count this is known as the Changing Quota.

Decimal Quota.—The Changing Quota system reduces the wastage of votes to a minimum. But even here there is a slight element of waste and where the electorate is very small this would materially affect the results. What is called the Fractional or Decimal System would be found useful in such cases.

Let us take the hypothetical example given by Hoag C. G., and Hallett G. M. " 5 candidates are to be elected and only 7 ballots are cast. The Droop Quota is evidently 2, and it is not safe to reduce it to 1 until after two quotas have been made up. The count of first choices is as follows :—

PARTY A.		PARTY B.	
Candidate—		Candidate—	
C	2	F	1
D	2	G	1
E	0	H	1

Under these circumstances the three voters elect three candidates while the other four elect 2." To avoid such anomalies, an attempt is made to reduce the fraction to the absoulute minimum. To facilitate the working of the process, each valid voting paper is given the value of 100. In the above example the total value of the 7 valid voting papers is 700. Applying the principle of the Droop Quota for the first count, the quota would be $\left\{\frac{700}{5 \text{ Seats} + 1}\right\} = 116\frac{2}{3} + 1 = 117\frac{2}{3}$. Omitting the fraction, a candidate should secure 117 points or in other words 1·17 votes. Both C and D would be declared elected, and their surpluses 83 points or 0·83 vote would be transferred to the candidates still in the run on the basis of their second choices. If the second choices of the voters who voted for C and D favoured E he would get elected in preference to the others as he would get 166 points or 1·66 votes. This system is known as the Fractional or Decimal Quota. This is the system followed for the election of candidates from the European Constituency of the Bengal Legislative Assembly.

(2) How the Surplus Ballots Are Transferred

For illustrative purposes, we shall take it that the total number of valid votes is 1000, the number of candidates to be elected is five, and the successful candidate has polled 267. The Droop Quota being 167, the number of surplus ballots to be transferred is 100, and here are the various ways in which they are transferred.

Chance Method.—This operates under different forms :—

(*i*) The ballots are numbered serially as they are taken up for counting. The first 167 are allotted to the successful candidate, and the rest are set aside for transfer. (*ii*) To ensure that the votes selected for transfer are representative of the whole lot, certain fixed numbers, 5, 10, 15 and so on are selected for transfer. (*iii*) It is also common to select an equal proportion of votes from the different voting centres to make up the number 100. The chance method has the advantage of convenience, but it does not always ensure correct results.

Exact Method.—To remove this element of chance two popular devices are employed. Under the first, all the ballots of the successful candidate are classified on the basis of their second choices, and an equal proportion of ballots are taken out of each pool to make up the number of surplus ballots to be transferred, namely, 100. Under the second, all the votes are taken into consideration but each vote is valued at the proportion the surplus ballots bear to the total number of ballots ; in this case at 100/267. Either of them would give satisfactory results in large elections. The latter is particularly useful in respect of small electorates.

(3) How Unsuccessful Candidates Are Eliminated

When the surplus ballots of successful candidates have been transferred and some candidate must be declared as defeated it is usual to choose the one with the fewest ballots at the time. This is found to give satisfactory results in most cases, and hence is generally adopted. The strictly logical method of elimination, however, would be "to require that no candidate should be defeated (except in case of tie) unless there were other continuing candidates (candidates still in the run), equal in number to the places to be filled, each of whom was preferred to the candidate in question on every one of a separate full quota of ballots". "This seemingly complicated principle is really simple. It means, if one is to be elected, that no candidate shall be defeated unless some other continuing candidate is preferred to him by a majority of those who have expressed a preference between the two; if two are to be elected, it means that no candidate shall be defeated unless there are two candidates each of whom is preferred to him by a separate group of voters numbering more than a third of those who have expressed any preference among the three; etc."* A device has been found to achieve this object, although its adoption, because of its greater complexity, is not normally advisable.†

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* p. 397, Proportional Representation: Hoag and Hallett, 1926.

† For particulars see "The Single Transferable Vote, with the Hallett Count", p. 399, Item.

APPENDIX III

APPORTIONMENT OF SEATS AMONG PARTIES UNDER THE LIST SYSTEM

The problem of apportioning seats among individual candidates, discussed in Appendix II is different from that of apportioning them among parties. Here is a brief discussion of it.

FIXING THE QUOTA

There are 3 main methods.

(i) **The Remainder Method with the Simple Quota.**—Under this method the number of valid votes is divided by the number of seats, and the quota fixed. Each party is given as many seats as it has full quotas. After the seats are thus allotted if there are any seats still unfilled they are assigned to the party with the largest incomplete quota. Let us take an example: The number of members to be elected is 5, the total number of valid votes to be distributed is 1,000 and there are 4 party lists. The number of votes polled by each list is as follows :—

A	B	C	D
505	260	120	115

The quota would be 1000/5=200. A would get two seats, and B would get one. There would be 2 seats yet to be filled. The remaining incomplete quotas of the parties would be as follows :

A	B	C	D
105	60	120	115

C and D holding the highest number of votes would each get a seat.

The anomaly that would result is obvious at first sight. A polling four times C and D and securing more than one-half of the votes gets only 2/5ths of the seats.

(ii) **The Remainder Method with the Droop Quota.**—The Simple Quota is still used in some countries but an improvement upon it is the Droop Quota. The only difference is that the number of valid votes is divided by the number of seats to be filled plus one in fixing the quota. The Droop Quota in the above example would be 1000/5+1=166 2/3+1=167 2/3 ; omitting the fraction 167. Taking this as the basis A would get 3 seats and B 1 seat. The remaining incomplete quotas of the parties would be as follows :

A	B	C	D
4	93	120	115

The fourth remaining seat would now go to C.

Under this new method A who polled a majority of the votes would get a majority of the seats, but B who polled twice as much as C would get only one seat.

(iii) **The D'Hondt Method.**—To remedy this defect Professor Victor D'Hondt of Belgium put forward a formula which is found by experience to give excellent results and is widely adopted. This formula is "to divide the vote of each list by the integers 1, 2, 3, 4, etc., and assign the seats to the largest quotients". In the example given above, the result would be as follows :

Divisor	A	B	C	D
1	505-I	260-II	120	115
2	252½-III	130-V	60	75
3	168⅓-IV	86⅔	40	38⅓

The last quotient for which a seat is assigned namely, 130, is the D'Hondt Quota. Even this system is not wholly without limitations. It is often complained that this tends to favour the bigger parties. On the whole, however, this appears to be the most acceptable form of fixing the quota under the List System.

AVOIDING WASTAGE OF VOTES

Whatever form is adopted for fixing the quota, after all the seats in a constituency have been filled, it will be found that a large number of votes have proved ineffective ; in other words, so many voters have been denied representation in the legislature. In the above example parties C and D have failed to get a seat and all the votes polled in their favour are wasted.

Two devices are commonly employed to avoid this.

(1) **Combination of Lists.**—In the above example, if parties C and D had combined hands and not remained aloof, they would have together captured one seat. Such combinations have been permitted in some countries, and availed of by parties with similar interests and ideologies. After seats have been apportioned to the combined list, the seats are re-allotted to the parties forming the combination. This system has not been quite popular because it tends to blur the line separating the parties, particularly in the mind of the electors.

(2) **National and Regional Adjustments.**—A second way of avoiding this wastage of votes and securing a more equitable representation of parties is to add together the incomplete quotas polled by a party in different constituencies and assign seats in proportion to the number of votes thus gathered together. The working of this system would be clear from the provisions made for the purpose in Weimar Germany. The country was divided into thirty-five electoral districts. Each party prepared a list of candidates for each of these districts, the larger of the parties including in their lists as many names as there were seats to be filled. A uniform quota for the whole country was fixed ; for every 60,000 votes polled in a constituency a party would get a seat. If a party polled 150,000 votes, it would get two seats as it had two complete quotas. But there would still remain 30,000 votes or $\frac{1}{2}$ a quota to the credit of the party, and no seat could be assigned to the district list of the party. To ensure that a party did not lose the benefit of such incomplete quotas, each party was allowed to submit a regional list and a national list. The incomplete district quotas of a party within a region were added up, and a seat assigned for every complete quota reached. After seats were allotted to the regional lists, the incomplete regional quotas of a party were added together and a further assignment of seats made.

The above system is criticised on two grounds : (1) The total number of seats in the legislature depends ultimately on the interest evinced by the electors ; and it goes on fluctuating from election to election. (2) It also affects the number of members returned by each of the districts. The failure of the electors of a district in participating in the elections in their full numbers reduces the number of members returned by the district. This goes against the long established practice of assigning a definite number of seats to each of the districts.

A different device is sometimes adopted to keep the size of the legislature fixed and at the same time achieve strict proportionality in the apportionment of seats among the parties. This is done by adding together the votes polled by the parties in the country as a whole, and then by assigning seats to them without reference to the electoral districts. After this the seats secured by each of the parties are divided among their district lists in proportion to the votes cast for them. Under this system it would not be possible to assign a fixed number of seats for each of the districts.

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on 30 January, 2020